

オーストラリアとニュージーランドにおける
少年法制度の研究
— Family Group Conference を中心として —

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I. 序論

わが国を含めて、多くの先進国で少年犯罪に対してどのように対処すべきかが大きな問題となってきた。教育刑思想・社会復帰思想に対しては1960年代から、その理論的根拠に対して批判の目が向けられ (F. Allen, *The Decline of the Rehabilitative Ideal*), 1970年代に入っても、Martinson 報告書などで、統計の側面からもその欠陥が指摘されていた。しかし、少年の場合には将来に向けた変量 (mutability) に富んでいるとの理由で、このような思想が堅持されてきたし、その思想を基盤とする少年法も、過去50年にわたり、ほとんど全く変更を受けない

まま現在に至っている。ところが、少年犯罪が多発・凶悪化するにつれて、わが国でも現在の少年法制度とその理論的根拠に疑問が提起され、少年法の改正がますます強く口にされるようになった。

今後、少年法の進む方向は、一つはアメリカ合衆国のように厳罰化が考えられるし、もう一つの方向として、Australia・New Zealandで採られているような、幾つかの段階を設け、しかもその中に被害者と犯罪者が対面して、話し合い、事件をどのように処理するかを決める Family Group Conference を含めることにより、被害者や社会に生じた損害を修復する制度が考えられる。本稿では、この Family Group Conference に関する制度がどのような形で運用され、いかなる価値を持ち、どの程度成功しているのかを紹介し、議論してみたいと思う。

両国では、犯罪少年に対する処理を四段階に分けている。第一段階は、非公式警告 (InFormal Warning, InFormal Caution) であり、第二段階は公式の警告 (Formal Caution, police Warning) であり、第三段階は Family Group Conference (この他に、様々な名称が付けられている；後掲資料参照) であり、最後に少年裁判所 (Youth Court) がある。Australia と New Zealand では、具体的な手続に違いが見られるし、前者は連邦制を採っているために、各州及び Canberra (Australian Capital Territory) の間でも多少の違いが見られる。これらの具体的な相違点については、それぞれの制度の説明の中で触れようと考えているが、いずれにせよ、両国の少年犯罪の取組みの中心となるのは、Family Group Conference であると言ってよい。

Family Group Conference の制度それ自体は New Zealand に起源がある。New Zealand にはマオリ族をはじめとして、いくつかの少数民族が住むが、彼らの持つ裁判制度は植民地時代にほぼ破壊されてしまった。確かに、イギリスとマオリ国が協調関係を築く条約が結ばれることもあったが (the Treaty of Waitangi, 1840)、現実にはマオリ族の文化が植民者の文化と併存することなど許されなかった。マオリ族の中での、犯罪少年、虐待された少年、そして遺棄された少年を大家族 (whanau) や、一族 (hapu)、部族 (iwi) が集った上で、どのように扱うかを決め、マオリ族の中で面倒を見るという制度も破壊され、そのような子供は親や部族から引離され、国家がその価値に従って、子供の処遇を行った。この状況は、1980年代に多文化主義 (multi-culturalism) が台頭し、マオリ族の文化も一つの、価値を持つ文化として見られるようになるまで続いた。

1980年代に少年の処遇についての議論が沸き起ったとき、その中心的課題は虐待されたり、遺棄された少年という狭い領域に限られていた。しかし、この問題は必ずしも少年犯罪と関連性がないわけではないことから、少年犯罪の問題も議論の枠の中に入ってきた。マオリ族は、この時当然のことながら、子供を家族から引離して処遇することには強く反対した。彼らの主張とは、少年処遇の判断は、大家族（extended family）、一族、そして部族を含めたすべての者が関与して行われるべきであり、専門家がその判断を下すべきではないというものであった。少年の行った犯罪に対して、社会はその家族を非難し、親に罰を与えるというやり方で親に責任をとらせるが、同時に少年とその家族には助力を提供せず、しかも処遇の判断に関与させないというのは、矛盾しているというのがその理由であった。そのために、少年の問題は、国家と家族が協力して解決すべきであるとの合意に到達したとき、その根底には、少年犯罪解決のためには、家族を関与させて、少年に対処する責任を与え、社会福祉の専門家の権限をできるだけ制限する意図があった。また、それと同時に、文化の観点から適切な方法で、家族を支え、少年が必要とするものを充足するサービスを提供するのが国家の責任であると考えられた。

元来、マオリ族は犯罪及びそれに対する罰と償いは、単に個人に関係する問題ではなく、その個人を取巻く集団にも関係すると考えていた。従って、少年が犯罪を犯したのは、その個人の環境と家族環境における適正なバランスが欠如していたからであると考え、同時に、罪の償いは被害者だけでなく、その家族に対しても行われなければならない。このように、Family Group Conferenceは、単に犯罪者と被害者の関係だけでなく、もっと広くその両者を取囲む関係にまで視野を広げて、犯罪が発生する環境や状況をもたらす社会の生む問題を解決しようとするものである。この点で、Family Group Conferenceは、いわゆる被害者--犯罪者間の調停（Victim—Offender Mediation）とは根本的な違いを示すと言ってよい。後者は、その被害者と犯罪者との間で合意が成立すれば問題は解決されたと考えるからである。また、前者は、原則として、被害者と犯罪少年の両方がFamily Group Conferenceに出席して、対面することを要件とするが、後者では、お互いに代理の者をたてて話し合いをする事もできるし、また電話などを利用し、必ずしも対面しないで合意に至ることは可能だからである。ただ、Family Group Conferenceにおいても、被害者が必ず出席しなければならないことは要件とされておらず、実際にも被害者の代理が

出席することもある。

II. 各地域における制度と運用

1. New South Wales

まず、Australia では、10 歳未満の少年は刑事責任能力がなく、10 歳以上 14 歳未満の少年については、*doli incapax*（刑事責任能力がないとの推定）が働くが、これは国側が、少年が自己の犯罪行為が重大な不正行為（*wrong*）であることを知っていたということを合理的な疑いを入れない程度まで証明することにより、破ることのできる推定である。もっとも、連邦司法省（the Federal Attorney-General's Department）は、1990 年の報告書の中で、この *doli incapax* の原則は維持すべきだが、少年が自己の犯罪行為が不正行為であることを理解していなかったとの証明責任を、被告発者が負うべきであると勧告している。（なお、この原則は、Great Britain では、1998 年に立法により、廃止された。）そして、Northern Territory, Victoria, Tasmania, 及び Queensland では、17 歳以上で成人として刑事手続で処理され、その他の州と ACT では、18 歳以上で成人として扱われている。New South Wales では、犯行時 10 歳以上 18 歳未満、そして事件が少年裁判所に提起されたときに、21 歳未満である者については、少年裁判者が管轄を持つが、事件がきわめて重大である場合には（*murder* と *manslaughter*）、18 歳未満でも成人の刑事裁判所で裁判を受けることがある。だが、以下に述べるように、少年に対する手続は細分化されている。

1991 年に Australia で初めて、Family Conference が実験的に導入された場所が、New South Wales の Wagga Wagga という場所であった。当時の調査によれば、少年法制度は犠牲者の必要を無視し、犯罪少年に寛大で、広く共同体に及ぶ被害の弁償を求めているとの理由で、警察官はその制度に失望していたことが判明した。このような風潮を変える試みとして、改変された *police Cautionary diversion* の重要な要素として、Family Group Conference が導入された。Family Group Conference の内容は、New Zealand のものと似ているが、理論的な基礎は異なっていた。この Wagga モデルは、Braithwaite 教授の主張する *Reintegrative Shaming* の概念、つまり、犯罪少年が社会のメンバーとなり得るように体質を改善する基になる『罪』と『恥』の意識を基礎としており、Restorative Justice の理念とは異なるものであった。この *Reintegrative Shaming* は問題の解決過程で、少年の家族だけでなく、被害者も含める

ことにより、自己の行為が及した影響を覚醒させ、少年の行動を非難し、その上で少年を再度共同体に組込むというものであり、これは従来の、裁判所を基礎として、少年に烙印を押し、その人格を低め、社会から少年を取除くことにより、家族や共同体との結びつきを弱める方策と対象をなすものである。Wagga モデルのもう一つの特徴は、手続全体が警察により統制されている点である。逮捕官憲が少年裁判所への起訴をすべきだと考えた場合には、Sergeant's Review Panel が Family Group Conference を開くべきかどうかを判断するし、Family Group Conference は Cautioning sergeant と呼ばれる少数の警察官が主催し、警察署で開かれる。また、賠償と弁償に重点が置かれていた。

このような制度に対しては、警察官が大きな役割を果しているために、被害者寄りの制度であって、少年やその家族からは公正なものとは考えられないとか、警察が少年にあまりに大きな影響を及しすぎるとか、比較的軽微な犯罪まで、この Family Group Conference で処理される場合がでてくるために、国家の介入の度合いが拡張するなどの批判がされた。そのために、当時の New South Wales のリベラル政府は、この Wagga モデルとは異なって、State Youth Conferencing Council に対して責任を負う、警察から独立した Conference Co-ordinator を設置するという方向で制度を構築することを考えた。そして、さらに考慮を重ねた結果、Young Offenders Act 1997 が成立した。

Young Offenders Act 1997 は、Warnings, Cautions, Youth Justice Conferences の手続を設け、Children (Criminal Proceedings) Act 1987 で Children's Court という手続を設けている。この 1997 年法は、犯罪少年に対する制裁は、身体の拘束は最終手段であること、少年が法律上の助言を受ける権利があること、刑事裁判手続は、他に代替手段があるときには開始してはならないこと、犯罪少年の再組込みを助け、家族や共同体との絆を維持するために、共同体内で処遇すべきこと、手続の中に親を含めること、被害者はこの法律の下で手続に参加でき、かつ手続の進行状況について情報を受ける権利があることなどを基本原則 (principles) としている。

a. Warnings

この Warnings は summary offence を犯した者に対して行うことができるが (§ 13, これには例えば、他人の気分を害するような行動や言葉、公共の場所での未成年者の飲酒、猥褻物の露出、人体や物を傷つけるのに使われる道具の所持、暴力を

用いた秩序の攪乱，交通の妨害，落書，売春，ナイフの所持や，16歳以下の者へのナイフの販売などがある（the Summary Offences Act 1988），粗暴犯の場合，あるいは捜査官憲の意見では，他の手段による方が適切で，正義に適うと考えられる場合には，少年は Warning で処理される権利はない（§ 14 (2)）。この Warning は少年が発見された場所を含み，いかなる場所でも，捜査官憲が与えることができるが，他に条件を付したり，他の制裁を科してはならない（§ 15 (1) (2)）。Warning を与えた官憲は，Warning の記録を，法の要件に従って記録しておかなければならない（§ 17）。

b. Caution

少年が，Caution を与えることのできる犯罪を犯し，かつその犯罪を犯したことを認め（犯罪の自認は，少年に責任を持つ者，少年の同意を得て Warning の場にいる者，少年が16歳以上の時には，少年の選択した者，あるいは少年が選択した弁護士の面前で行わなければならない，捜査官憲はこの中には含まれていない（§ 10））。かつ少年が Caution を受けることに同意した場合に，正式の Caution を与えることができる（§ 19）。捜査官憲はこの場合，犯罪の重大性，暴力の程度，被害の程度，犯罪の数と内容，過去の犯罪歴，その他の状況を考慮に入れなければならない，その結果，暴力や犯罪の重大性とは関係なく，事件を specialist youth officer（警察の1部門）に送致し，Youth Justice Conference で処理すべきかどうかを判断してもらうことができる（§ 20 (3) (4)）。この Caution を与える場合には，捜査官憲は少年に対して，犯罪の内容と状況，弁護人による法律上の助言を受けることができること，裁判所での処理を選択できること，及び Caution の目的，内容，効果を説明しなければならない。

Caution は，Director of Public Prosecutions も与えることができ，その際の判断基準は，捜査官憲の場合とほぼ同様であるが，事件を Director of Public Prosecutions に送致するためには，Commissioner of Police（長官）が書面で授権した者に対して行わなければならない（§ 23）。Caution を与える前には，少年に犯罪事実，Caution の対象者，Caution の目的と内容，日時・場所，不出頭の場合の結果，弁護人による法律上の助言を受ける権利があることなどを記載した告知書面（Notice of Caution）を送致しなければならない（§ 24）。Caution を与える前はいつでも，捜査官憲は specialist youth Officer に，Director of Public Prosecutions は Conference Administrator に，

事件を送致できる（§25）。Cautionは、告知が到達してから10日以上、21日以内に与えられなければならない。この場所は、必ずしも警察署には限定されず、またCautionを与える者も警察官やspecialist youth officerに限られず、共同体内の尊敬されている人物も与えることができる（§27）。Cautionを与えるときには、少年に一定の範囲で、付添人が認められているが、その中には、弁護士は含まれていないし、Cautionを与える捜査官憲とは別の捜査官憲も出席できる（§28）。

Cautionを与える者は、その内容を少年がよく理解できるように伝えなければならない。また被害者に対して書面で謝罪するように要求することはできるが、それ以外に条件を付けたり、制裁を科してはならない。Caution手続の終了後、少年に告知書(Caution notice)を交付し、少年の署名を求めなければならない（§30）。Cautionはまた、裁判所も与えることができ、それはCautionを与えることができる犯罪であることと、少年が犯罪を自認していることが要件となる。この場合、犯罪の自認は§10の制限を受けない。

c. Youth Justice Conference

このConferenceの目的は、対象となっている少年に関する処遇を決定し、勧告を与えることにあるが、その根底には、犯罪少年が自己の行為に対する責任を受入れるようにすること、少年の家族の結びつきを強化すること、少年が犯罪行動に出ることに克ち勝つことができるように支援をすること、少年手続での、被害者の権利と地位を強化すること、被害者の利益を適切に尊重することなどの目標がある（§34（1）（a））。

Youth Justice Conferenceを開くべきかどうかを決定するのは、Specialist Youth Officerであり、開催すると決定したときには、事件をConference Administratorに送致しなければならない（§38（1））。Specialist Youth Officerが裁判手続を開始すると決定したときは、事件を捜査官憲または適切な権限を持つ部局に送致しなければならない（§38（3））。Director of Public Prosecutionsまたは裁判所も、Conferenceを開催できる犯罪であり、かつ少年が犯罪を自認していること、Director of Public Prosecutionsの場合は、少年がConferenceの開催に同意しており、さらにDirector of Public Prosecutionsまたは裁判所が、Conferenceを開催すべきであるとの意見を持っていることを要件に、事件をConference Administratorに送致することができる（§40（1））。裁判所は、少年が有罪であるとの認定をした後などは、いつでも事件をYouth

Justice Conference に送致することができる（§ 40 (3)）。Conference Administrator は事件が Specialist Youth Officer から送致されてきたとき、事件の重大性や暴力の程度、被害の重大さなどを考慮した上で、事件を Conference で処理すべきでないとの意見を持つにいたった場合には、Specialist Youth Officer と相談することができるが、合意に到達しないときは、事件を Director of Public Prosecutions に送致しなければならない（§ 40 (2)）。Director of Public Prosecutions は事件が送致されてきたとき、少年が Caution, Conference あるいは刑事裁判のいずれかで処理されるかを決定しなければならない（§ 40 (4)）。Caution, Conference, あるいは刑事裁判の開始について、Conference Administrator と Specialist Youth Officer との間で合意に到達し、あるいは Director of Public Prosecutions がそのように決定したときには、Conference Administrator が事件をそれぞれ適切な部局に送致しなければならない（§ 40 (6) (7) (8)）。

Conference は、Conference Administrator が Conference Convenor を任命することから始まる（§ 42 (1)）。そして、Conference は Conference Administrator が事件の送致された日から 21 日以内に開催しなければならない（§ 43）。Conference Convenor は、Conference を開催する日時・場所、参加者などを決定し、その後それらの情報に加えて、犯罪事実、少年が選択した者を参加させてもらう権利、少年が出席しないときの結果、法律上の助言を受ける権利などが記載された告知書面を、少年に送達しなければならない（§ 45 (3)）。Conference の開催場所は、警察署、裁判所、あるいは Department of Juvenile Justice 以外の場所で開催しなければならないが（§ 46 (1)）、少年がすでに detention center で拘留されている場合には、その拘留場所で開催することができる。

Conference に参加する権利のある者は、少年、Conference Convenor、少年に責任のある者、少年の家族、少年が選択した成人、弁護士、捜査官憲、Specialist Youth Officer、被害者もしくは被害者が選択した者、被害者の支援者である。また、Conference Convenor は、適切だと考えるときには、共同体の長老、通訳者、言葉の伝達者、少年が保護下にあるときには、ソーシャル・ワーカーその他の健康の専門家、少年が保護観察または共同体内役務の命令を受けているときには、その監督者、そして家族や拡大家族が要請する者の参加を許すことができる（§ 47 (2)）。Conference

Convenor は少年が弁護士による弁護を、一般的にあるいは Convenor が課す条件の下で、受けることを許可できるが、原則として、少年は弁護士からの助言を受ける権利はあるが、弁護を受ける権利はない（§ 50）。少年が Conference に出席しない場合には、その旨を Conference Administrator に知らせなければならず、Conference Administrator は事件を送致してきた部局に、事件を再度送致しなければならない（§ 51）。

Conference の結果、到達した合意には参加者全員が同意する必要はないが、少なくとも被害者と犯罪少年は同意しなければならない（§ 52 (1) (3)）。被害者が直接 Conference に参加していないときには、被害者の同意は必要ではないが、その場合、被害者は、達成に到った合意を拒否することはできない（§ 52 (4)）。この合意内容は現実的で、適正なものでなければならず、制裁は刑事裁判を受けたと仮定したときに科される制裁の限度を超えてはならない（§ 52 (6)）。また、合意には、それを実現する期限、そのための監視方法が記載され、そして規則 (Regulations) で決められている時間を超えた共同体内役務を科してはならない。

Conference Convenor が、合意に到達することができないと考えたときには、その旨を Conference Administrator に通知しなければならず、Conference Administrator は事件を送致してきた部局に、事件を逆送致しなければならない（§ 53）。事件が裁判所から送致されてきたときには、Conference Convenor は合意内容を裁判所に通知しなければならない（§ 54 (1)）。だが、裁判所にはその合意内容を承認するかどうかの裁量があり、裁判所が承認しないときには刑事裁判を開始することになる（§ 54）。Conference は、Conference Administrator の決定により、または複数の参加者の請求により、合意内容を再度考慮するために、Conference Administrator が Conference を再度開始することができる。しかし、Conference Administrator が、Conference の再開が正義に反するとか、合意内容が不適切となったり、実行不能になったと判断した場合には、その限りでない（§ 55 (3)）。合意内容の監視、実施そして履行を監督・監視するのは、Conference administrator であり、合意内容が履行されたかどうかについての通知は、書面で、少年及び被害者及び事件を Conference に送致した者あるいは機関、及び Commissioner of Police, Director of Public Prosecutions あるいは裁判所に送達しなければならない。

少年の身元やそれを示唆する情報は、活字化したり、放送してはならないの

が原則である (§ 65 (1)). しかし, 刑事手続を登載した公文書で, 少年の氏名を含む文書の出版や放送は禁止されないし, 少年が 16 歳以上の場合, その者の同意があれば, その氏名の公表は禁止されない (§ 65 (3)).

2. Canberra (ACT) / Wagga Model

キャンベラでは, Children's Services act 1986 があるが, これは伝統的に犯罪少年を刑事手続にのせて処理する規定であり, Family Group Conference のような制度に関する規定はない. しかし, キャンベラの Australian Federal Police は 1994 年に, Diversionary Conferencing と呼ばれる制度を導入し, 現在実験を行っている (RISE – Reintegrative Shaming Experiments). この実験は, Australian National University Law School に所属する John Braithwaite 教授の主唱する Reintegrative Shaming の理論を実践しようとしているものであり, 同大学の Research School of Social Sciences が統一的评价を行い, その資金は Criminology Research Council と Commonwealth Department of Health and Family Services が提供している.

この Diversionary Conferencing は, 自己の犯罪を自認している者だけを対象としており, 警察署内の一室で開催される. まず, 犯罪者が自分が行った行為を説明し, 次に被害者が, その犯罪により物理的・心理的に被った被害を説明する. その後, 双方の支援者が, 犯罪とその影響, そしてそこから生じた被害を修復するのに最適な方法を議論する. ここでは, 警察官が Conference の進行を執るが (facilitator), Conference の結果を決める役割は負っていない. facilitator は, 次に被害者が適切な罰あるいは賠償についての提言を用意しているかどうかを尋ねる. これには, 金銭の支払いや役務の提供も含まれるし, 通常は謝罪も含まれる. Facilitator は, Conference の参加者の間で生じてきたと見られる合意をまとめ, 犯罪者がその合意に同意するかどうかを尋ねる. これまでのところ, 一件を除いて, 犯罪者は合意に同意している. 犯罪者が, 合意された期間内に条件を充足しないときは, 事件は訴追のために裁判所に送致される. この場合には, 犯罪者が Conference で行った供述は, 法廷での有罪立証の証拠として用いられてはならない.

RISE project の実験内容は, drink driving (all ages), juvenile property crime including personal victims (under 18), juvenile property crime from stores (under 18), youth violent crime (under 30) の 4 つの種類の犯罪に分けて, 犯罪者を無作為に Conference と

裁判所に行く者とに分け、その態度や効果・結果を調べようとするものである。その犯罪者の態度や効果として、12の項目にわたって調査している。① time for justice (処理期間), ② participants (関与者), ③ emotional intensity (情緒), ④ procedural justice (手続運用), ⑤ Restorative Justice (修復目的の法運用), ⑥ retributive justice (応報的な法運用), ⑦ Reintegrative Shaming (社会に再び組み入れる恥の意識), ⑧ stigmatic shaming (社会から非難を受ける恥の意識), ⑨ defiance (反抗的な態度), ⑩ apologies (謝罪), ⑪ forgiveness (宥恕), ⑫ discussion on the issues of the offenders' substance abuse (犯罪者が価値を表した限度を超えた行為についての討議) である。この実験結果については、後に述べることにする。

3. South Australia

South Australia では、Young Offenders Act 1993 に従って犯罪少年が処理されている。この法律の目的は、犯罪少年が共同体での責任のある、有用な一員となるために必要な保護、矯正としての指導を確保することであり、その具体的な内容には、犯罪少年に法の下での義務と、法に違反した結果を必ず認識させること、そして共同体及びその中の個人は、粗暴行為あるいは違法行為から適切に保護されなければならないことという二つの目的を持っている。制裁を科す場合には、裁判所によるにせよ、それ以外の場合にせよ、抑止効 (deterrent effect) を重視しなければならない (§ 3 (1) (2) (2a))。この法律が狙う具体的効果は、補償や賠償の支払い、犯罪少年の家族関係の維持と強化、家庭環境から不必要に隔離することの回避、犯罪少年の教育や雇用への不必要な介入の禁止、少年の人種、民族あるいは文化の点での identity を損なうことの禁止が挙げられている (§ 3 (3))。

South Australia でも、犯罪少年の処理については四段階の制度がある。第一は InFormal Caution, 第二は Formal Caution, 第三は Family Conference, 第四は Youth Court である。

a. Informal Caution

犯罪少年が minor offence を理由に身柄を確保されたとき、または警察官が正式手続を開始する正当な根拠がないと考えたときには、informal に Caution を与え、それ以上には手続を進めないことができ (§ 6 (1))、それは記録されてはならない (§ 6 (3))。

b. Formal Caution

それに対して、同じ minor offence を犯した少年であっても、警察官は Formal Caution を与えるか、少年が犯罪を自認しているときには、それを Youth Justice Coordinator に通知して、Family Conference を開くか、あるいは Youth Court に事件を訴追することができる。前二者の選択をする場合には、警察官は少年に対して、犯罪の内容とその状況、弁護人による法律上の助言を受ける権利があること、事件の Youth Court での処理を受ける権利があることを説明しなければならない (§ 7 (2))

(a). 少年がこの前二者のいずれかを選択したとき、警察官は犯罪の自認の書面を作成し、署名を得なければならないが、この説明あるいは署名は、できるだけ保護者あるいは少年が指名する者の面前で、行わなければならない。少年が Youth Court での処理を要求した場合、あるいは少年が犯罪を反復したとき、たはその少年に加重事由があるために、警察官限りでの処理またはあるいは Youth Conference での処理が適切ではないと警察官が判断したときには、事件を Youth Court に訴追しなければならない (§ 7 (4)).

South Australia では、警察官が科す制裁の幅が広い。警察官が minor offence 処理を決定したときは、これ以上の犯行を重ねないように Formal Caution を与えることの他に、少年に対して、被害者への賠償目的の役務の履行を求めたり、75 時間を超えない限度で、共同体内役務の履行を求めたり、被害者に謝罪をする行為、その他適切だと思われる事柄の履行を求めることができ、それは択一的でなく、いくつかの履行を平行して求めることができる。Formal Caution が与えられたとき、警察官は Caution の内容と、Caution の証拠は犯罪を行ったことの証拠として扱われることを少年に説明しなければならず、Caution は保護者または少年が指名する者の面前で与えなければならない。また、Caution は書面形式で作成しなければならず、少年の署名が要件となる (§ 8 (2)). 少年に対して役務を要求するときには、少年の保護者が事件について弁護 (representation) できる機会を与える合理的な手段を採らなければならない。また、警察官は役務を科す権限を行使するときには、Youth Court が同種の犯罪に対して科すのと同等の刑を念頭に置かなければならず、かつ Commissioner of Police によるガイドラインを尊重しなければならない (§ 8 (4)). 少年が被害者に謝罪するときには、その謝罪は警察官が承認した成人の面前で行わなければならない (§ 8 (5)).

少年が役務を行うことに同意したとき、それには少年、Commissioner of Police の代理の者、そして可能ならば、少年の親または保護者が署名しなければならないし、役務の期間は全体を通じて3ヶ月を超えてはならない（§8 (6)）。少年が警察官の課した要件に従わないときは、事件を Youth Justice Co-ordinator に送致することができ、あるいは少年が求めるときは、Youth Court に事件を起訴することができる（§8 (7)）。警察官が Formal Caution によって事件を処理するとき、被害者に、犯罪者の身元と処理経過を知らせてもらいたいかどうかを尋ね、もし知りたいというのであれば、その情報を提供しなければならない（§8 (9)）。

c. Family Conference

Family Conference は Youth Justice Co-ordinator が主催するが、それは Youth Court の magistrate もしくは Courts Administration Act 1993 の下で選任された者でなければならない。但し、後者の場合、Youth Court の Senior Judge への諮問が必要である。任期は3年であるが、更新は妨げない。警察官が Youth Justice Co-ordinator に事件を通知するときには、少年の保護者、Conference に参加できると考えられる親戚や少年と密接な関係を持つ者、そして被害者の氏名と住所を提供しなければならない（§10 (1)）。Youth Justice Co-ordinator は Conference を開催する日時・場所を定め、少年に出頭要求通知を発付し、少年と被害者、それぞれを支援する者、及び Youth Justice Co-ordinator が適切だと考える者を召集する（§10 (2)）。Conference は、Youth Justice Co-ordinator、少年、被害者、被招集者、そして Commissioner of Police の代理で構成される（§11 (1)）。Conference による決定は、少年と Commissioner of Police の代理の者双方が同意したときにのみ有効となる（§11 (3)）。少年は、Conference で弁護士の助言を受ける (advised) 権利がある（§11 (4)）。Conference で決定に到らないときには、Youth Justice Co-ordinator は事件を Youth Court に送致し、Youth Court はその後、Family Conference が持つ裁判上の権限の範囲内で、あらゆる決定を下したり、権限を行使することができる（§11 (5)）。

Family Conference の権限には、これ以上犯罪を行わないように Formal Caution を与える、被害者への弁償目的の役務を履行するように求める、300時間を超えない限度で、共同体内役務を行うように求める、あるいは少年に、謝罪その他の適切な事柄の履行を求めることなどがあるが（§12 (1)）、制裁は Youth Court が同等の犯罪に対して科す刑と同等のものでなければならない（§12 (2)）。Formal Caution

を与えるときには、少年の署名が要件となり、役務の場合、その全体を通じての期間は12ヶ月を超えてはならず、弁償の支払いをするときには、そのコピーを Registrar に提出しなければならない。また、被害者への謝罪は、Conference または Youth Justice Co-ordinator が承認した成人の面前で、行わなければならない。少年が出頭しなかったり、取り決め事項を遵守しなかったときには、警察官は事件を Youth Court に起訴することができる (§ 12 (8))。被害者が犯罪者の身元と処理経過を知りたいかどうかを Youth Justice Co-ordinator が尋ね、知りたいと答えた場合には、その情報を提供しなければならない (§ 12 (11))。少年と被害者の身元を報道機関が開披するのは犯罪として処罰されるが、被害者の場合にはその承諾があれば開披できる (§ 13 (1))。

事件が Youth Court に係属しても、Youth Court はさらに事件を警察官または family Conference が取り扱うように、事件を再送致することができる (§ 17 (2))。犯罪が、殺人・致死 (homicide)、殺人未遂または予備 (attempt to commit homicide)、もしくは殺人・致死の意図に伴った傷害 (assault with intent to commit homicide) であるとき、あるいは犯罪が indictable offence で、少年が成人としての処理を選択したとき、あるいは Director of Public Prosecutions または police prosecutor が、犯罪の重大性または犯罪が犯罪反復の一環であることを理由に成人として処理すべきであると要求したときは、Youth Court は告発事実について、予備審問 (preliminary hearing) を行い、その上で、事実審理または量刑のために少年を Supreme Court または District Court に送致することができる。

4. New Zealand

ここでも、doli incapax の原則が適用されている。刑事責任年齢は10歳であるが、10歳から13歳の子供については、murder と manslaughter を除いて、Family Court Division で処理される。14歳から17歳の少年が Youth Court に送致される。

犯罪少年の養育 (care)、保護 (protection)、そして処罰をめぐる New Zealand における大きな変化は冒頭に述べたとおりである。Children and Young Persons Act 1974 は、17歳以下の者に関するあらゆる問題を Children and Young Persons' Court という単一の裁判所を設立することで解決しようとした。そのために、専門家を必要とした。この問題については、解決のための資源がなく、軽微な刑事事件まで係属し、福祉と正義の問題を混同する傾向があり、養育・保護の事件にも烙印が付随し

た。このような経験を元に、Children and Young Persons' Court はそのまま維持するが、特別の訓練を受けた裁判官やよりよい支援体制を提供すべきこと、Family Court とは別に、犯罪少年を扱う Youth Court を設立すべきことなどの提案がされた。

その根底にある概念は、犯罪や非行は特定できる原因から生ずるのであり、従って、処置が必要であり、そのためには早期の介入が必要であるとの考え方であった。そこで、Children, Young Persons and Their Families Act 1989 は、犯罪行為は比較的多くの少年に共通した出来事であるが、その中には重大犯罪を犯すようになる者はそれほど多くはないこと、もし訴追を行うと、助けようのない仲間に加わったり、仲間に協力できなくなる行為に少年を誘うことになり、さらに事態が悪化するので、できるだけ訴追は避けるべきであり、しかも養育・保護の問題は犯罪とは別の問題であり、犯罪行為は犯罪行為として扱うべきであるとの考え方を前提としていた。つまり、英米の法実証主義の二元論に立っていた。特に、Youth Court の設置を狙ったのは、犯罪少年の利益は福祉の観点からではなく、正義の観点から見るときにもっともよく実現されることや、社会では 14 歳以上の者は自分の行動に対して責任を負うべきだと評価するのが一般であり、従って、犯罪少年には公正な聴聞の機会と適正手続が保障されなければならないという主張がされた。養育・保護の問題と犯罪の問題を同一の裁判所で扱うと、福祉と正義の区別が曖昧となり、家庭への不当な介入が行われ、少年は社会福祉の名目の下に、不定期の期間、その地位に置かれるおそれがあるからというものである。少年犯罪についていえば、犯罪少年の責任を明確にしなければならないという要請が生まれる。

新法の原理として、まず少年に関する意思決定過程への家族の参加、家族関係の強化が重要視されている。次に、裁判は最後の手段であって、他に採ることができる手段を考慮し、それを受け入れることができないときに初めて採るべきであることが明記されている。さらに、家族関係を重視する立場から、少年は、社会の安全、社会の利益に反しない限り、共同体の中に留め置かれるべきであるとの原理がある。最後に、少年を処理する手段は、被害者の利益を適切に尊重するものでなければならないとの原理がある。以上に述べた事項を、養育・保護と正義の問題を一つの法律の中で扱い、しかもその中で両者を区別して、上記理念や原理を手続に反映しようとしているために、この新法は手続的に細かすぎる、悪夢の法律だと表現されることもある (District Court Judge B.D. Inglis QC, *Police v. L.* (1992))。

a. Warning

新法の下では、警察はできるだけ表面にでない (low-keyed) ことが求められている。Minor offence を犯した少年及び初犯の少年は訴追を受けず、犯罪現場での警告 (Warning) で処理される (§ 209)。それ以上の手続が必要であると考えられるときは、警察官は事件を警察内の Youth Aid Section に送致する。この Youth Aid Section は、少年の親の面前で少年に警告を発するか、被害者に対する謝罪を求めるか、共同体内役務などの制裁を、別々に科すことができる。そして、より重大な犯罪が行われていたり、上記の制裁が過去に有効でなかった場合には、少年を Family Group Conference に送致することができる (§ 260 (3))。従って、警察は、少年が逮捕されている場合を除いて、直接 Youth Court に事件を起訴することはできない。

Youth Court への出頭の確保のため、再犯に出るおそれがあるとき、または証拠破壊のおそれがあるときには、少年を逮捕することができるが (§ 214 (1))、少年が purely indictable offence を犯し、かつその少年の逮捕が公共の利益のために求められると思料される合理的な理由 (相当理由) があるときには、警察は前記の要件には拘束されない (§ 214 (2))。逮捕に続いて自由拘束をする場合の要件は、逃亡のおそれ、さらに犯罪を犯すおそれ、または証拠破壊のおそれがあることであるが (§ 239)、自由拘束場所としては、少年を養育する親または保護者、少年の同意があるときには、Iwi Authority または Cultural Authority または Director-General もしくは警察官が承認した者もしくは組織のみである (§ 234)。

b. Family Group Conference

Youth Justice Co-ordinator (Department of Social Welfare に所属する者である) が警察官と相談した結果、告発者 (informant) が少年は訴追されるべきであることを望んでいるとの通知をその警察官が受けたときは、少年が告発事実を否定し、かつ Youth Court が少年の勾留を命じた場合、少年が murder 及び manslaughter 以外の犯罪で逮捕され、Youth Court の前に引致された場合、そして告発事実が Youth Court で証明されたが、Family Group Conference がまだその少年の処分を審理する機会を持っていない場合には、Youth Justice Co-ordinator は Family Group Conference を開くべき日時・場所を定めなければならない (§ § 247, 245 (1) (b), 246 (a), 246 (b) (I))。

Family Group Conference には、犯罪少年、少年の家族やその代わりの者、Youth

Justice Co-ordinator, 告発者またはその代わりの者で, その者が法執行官でないときには, 法執行機関の代表者, 被害者またはその代わりの者, 弁護士などに出席する権利が与えられている (§ 251 (a) ~ (g)). 但し, ソシャル・ワーカーや Iwi Authority あるいは Cultural Authority あるいは Director of a Child and Family Support Service などは, 限定された要件の下でしか出席できない (§ 251 (h) (i) (j) (m) (n)).

Family Group Conference は Department of Social Welfare の一室で開かれるのが普通だが, 少年の家や marae (Maori meeting house) などで開くことも可能であり, 特に限定されてはいない. New Zealand の Family Group Conference は, 参加者の紹介から始まるが, 地域によっては祈りあるいは神への祝福 (blessing) から始まることもある. 次に, Youth Justice Co-ordinator が手続の流れ全体を説明し, Youth Aid Officer (police representative) が犯罪事実を手短かに述べる. Youth Justice Co-ordinator はその描写が正しいかどうかを少年に尋ね, 訂正箇所があればその場で訂正し, 少年が事実を否定すれば, Conference はそこで終了し, 事件は警察に送致される. 警察は依然として, 少年が犯罪を行ったと信ずるときには, 事件を Youth Court に再送致する. 少年が事実を認めたときには, Youth Justice Co-ordinator は被害者もしくは被害者の代理人に被害の状況や, それにより被った苦痛などについて話してもらう. その次に, 全員で到達可能な合意について一般的な話し合いを行う. それから, 少年とその家族及び少年の関係者だけがその場に残り, いかなる合意をするかを話し合う. その合意に到ると, 再度全員で集まり, 少年の立てた計画を聞き, それで決着することもあれば, さらに交渉が行われることもある. また, ここでは, 誰が合意事項の履行を監視するかも決められる. 最後に, Youth Justice Co-ordinator は警察官と被害者から同意を求める. 最終の合意事項は正式な文書に記録され, Conference は場合により, 祈り, 食事, 歌などで終わることがある. Conference の結果, 訴追をすべきか, または訴追を取り下げるべきであるとの勧告, 正式の police Caution を行うべきであるとの勧告, 子供 (child) は養育と保護を必要とするとの勧告, 適切な処罰の勧告, 賠償 (直接の損害に対する) の勧告などが行われることもある.

Ⅲ. 制度に関する中間要約

1. 責任能力

Australia ・ New Zealand 共に, イギリスのコモン・ローの影響を受けており,

doli incapax の原理が働いている。従って、10 歳未満の者には刑事責任はないとの前提が取られ、10 歳以上 14 歳未満の者については、刑事責任がないとの推定が働き、その推定を破るためには、国側が、少年が自己の行為が『不正なこと』(wrong) ことを知っており、単なる『いたずら』(mischief) ではないと考えていたことを合理的な疑いを入れない程度まで証明する責任を果す必要があり、14 歳以上 17 歳または 18 才未満の少年には刑事責任能力があるという原則が働いている。

2. 警告 (Caution, Warning)

『軽い』(minor) 犯罪を犯し、かつ初犯である少年に対しては、警察官による Caution で済ますことができる。この Caution は、犯罪を摘発した警察官、Family Group Conference、少年裁判所のいずれによっても与えることができるが、その内容は異なっている。New South Wales では、Warning も Caution も共に記録しておかなければならないが、それ以上の義務を課してはならない。これに対して、South Australia では InFormal Caution は記録してはならないが、Formal Caution を与えるときは、その Caution と 75 時間を超えない限度での、共同体内役務を科すことができる。New Zealand では、警察官の権限は限定されており、Warning は与えることができ、それは記録しておかなければならないが、Formal Caution は Family Group Conference の結果に基づいて、警察官が与えることができるかどうかが決る。ACT の RISE プロジェクトでは、本来あった Cautioning の上に Diversionary Conferencing が導入されたのであり、Cautioning については、New South Wales の場合と同様に考えてよい。

3) Conference

地域	NSW	ACT	SA	NZ
根拠	Young Offenders Act 1997	Local Policy (RISE Project/Wagga Model)	Young Offenders Act 1993	Children, Young Persons and Their Families Act 1989
立法目的	<ul style="list-style-type: none"> ・ 裁判手続以外の制度の利用 ・ 犯罪に対する有効で直接的な対応 ・ 共同体としての対応 ・ 補償と犯罪者の責任 ・ 被害者と犯罪者 	<ul style="list-style-type: none"> ・ Caution の有効化 ・ 犯罪者の責任 ・ 被害者への補償 ・ Reintegrative Shaming 	<ul style="list-style-type: none"> ・ 裁判手続以外の制度の利用 ・ 犯罪者に対する抑止効 ・ 共同体の保護 ・ 被害者への補償 	<ul style="list-style-type: none"> ・ 刑事手続の回避 ・ 家族の参加とその強化 ・ 少年の発育 ・ 被害者の利益の尊重

	の必要としているものの充足			
呼称	Youth Justice Conference	Diversionary Conferencing	Family Conference	Family Group Conference
振分けの裁量	警察官の裁量	警察官の裁量	警察官の裁量	Youth Justice Coordinator の裁量
警察官の役割	Conference の開始及び運営	Conference の開始及び運営	事実の提供及び警察・共同体の代表	事実の提供及び警察・共同体の代表
対象犯罪の種類	Minor offences	Minor offences 及び成人（30歳まで）の飲酒運転	Minor offences 及びより重大な犯罪	すべての犯罪
主催者	Conference Convenor	Conference Coordinator	Youth Justice Coordinator	Youth Justice Coordinator

いずれの地域にせよ、警察内に少年専門の部局があり (Specialist Youth Officer (NSW), Youth Police Officer (SA), Youth Aid Officer (NZ), Australia ではこの部局の警察官が事件の処理について大きな裁量権を持っているが、New Zealand ではこの警察官の裁量権は相当に限定されている。この裁量の幅が立法目的と密接に関連しているのは当然であり、少年法制度が Welfare Model から Justice Model に移ったといわれている New Zealand でも、Australia と比較すると、まだ Welfare Model の色彩が濃く、二元主義が採られているとあってよい。全体に共通して言えることは、この警察官と Conference の主催者との連絡が十分でない、この制度はうまく機能しないであろうということである。

3. Youth Court

上記のいずれの段階においても、少年が選択すれば、Youth Court での審理を受ける途が残されている。Youth Court の手続は非公開であるが、そこでの手続は成人の場合の手続と差はない。つまり、少年に弁護人がいないときには国選弁護人の助力が受けられ、訴追を行う者としては、警察官たる訴追官 (police prosecutor) または検察官が被告人と対峙し、論争主義に基づいて手続が進められる。証拠法の諸原則が働き、少年が犯罪事実を行ったかどうか認定される。但し、量刑については、上記のように、裁判所が直ちに刑を言渡すのではなく、Family Group Conference に事件を送致して、いかなる罰を科すかを判断させることができる。murder と manslaughter については、警察は事件を Youth Court に送致することができるが、Youth Court が告発事実を認定した後、事件を Family Group Conference に送致する点については、Australia では裁量事項であるのに対し、New Zealand では義務事項になっている。

る。

IV. 検討

1. 警察活動

警察活動は、典型的に分けて5つの形態があるといわれている。まず、伝統的な警察活動 (Incident-based policing) は、犯罪が当局に知覚されて初めて、警察が活動を開始し、証拠を収集し、一件記録を整理して検察官に送致するものである。現在では、無線の利用や警察車両の利用により、事態に緊急に対処することが可能となり、従って、事件現場に急行して、犯罪者の身柄の確保や証拠の収集が行われ、短時間で捜査を終え、次の事件の発生に備えることになる。ここでは、犯罪の未然の防止、被害者の発生の阻止、実際に生じた被害者に対する情報の開示やその被った苦痛を手続に反映させるなどの配慮が欠如し、処罰の手続はすべて国家対被告人の関係で進められる。国家による処罰が第一の関心事となり、犯罪行為や犯罪者が被害者や社会に及した影響は重視されない。

この Incident-based policing に対する代替として、Community policing が提唱された。これは、生じた犯罪への対応 (response) を第一の目的とするのではなく、共同体内の様々な関係を良好なものに改善し、それを維持することを第一の目的とする。共同体内での犯罪の防止を第一に意図しているが、犯罪の予防や防止を単に専門家集団に委ねるのではなく、その専門家集団と地域の人々が協働することにより、共同体の安全を図ろうとする。警察は、犯罪の発生、告訴・告発があって初めて活動を開始するのではなく、普段から地域の住民と緊密な連絡・関係を保つことにより、犯罪の未然の防止や摘発を容易にしようとする。もちろん、警察が市民や共同体と協働するとはいっても、依然として、警察は理由と必要がないときに、市民生活の中に入り込むことは許されないのであるから、Incident-based policing が Community policing に取って代わられることはない。ただ、Community policing は1980年代に、アメリカの都市部で殺人事件が増加したことから、少なくとも都市部でこの制度を有効に展開することには相当な困難があるとの見解が提示されている。

次に、警察活動の運営ではなく、その内容に着目し、個々の独立した犯罪行為への対応ではなく、それらの事件が総じて表す、共同体の安全に関する諸問題の型に目を向け、その第一の目標として犯罪の予防を掲げる Problem-oriented policing

が唱えられた。(Herman Goldstein, 1979) この考え方を実効化する方策として、犯罪分析とコンピューターによる犯罪多発の場所と時間のマッピングがあり、アメリカの多くの都市では、犯罪の目標を疫学の観点から特定しようとする試みがされてきている。

次に、犯罪予防に効果のあることを示す科学的証拠がある手段に、警察活動を振り向けることを目的とする、Evidence-based policing が唱えられた。これは、個々具体的な警察活動について、その有効性を検討して、警察活動を全体として効率の良いものにすることを目的としている。この作業の一環として、Incident-based policing が検討されたが、そこでは、事態に緊急に対処しても、逮捕率や一般の人々の安全にはほとんど影響がなかったことが示された。他方、この Evidence-based policing により、もっとも効率の良い捜査活動が何かは特定できないでいる。

最後に、Restorative (Transformative) community policing がある。これは、単独で伝統的な警察活動、つまり犯罪の発生に対応した捜査に代わるものではなく、むしろ上記の Incident-based policing と一体となって、犯罪の摘発、捜査及び予防と処罰を Restoration または Transformation の観点から行うことを目的としている。現在、ACT で行われている RISE Project は、この考え方に基づいているとされている。犯罪捜査は Incident-based で行われるが、その後は、警察とコミュニティーの協働が柱となる。コミュニティーという言葉は、地域共同体とか単に共同体と訳されているが、この概念は地域を基準とした結びつきに限定されるわけではない。犯罪を起こした者と被害者の、それぞれの家族や親族、友人などを含んだネットワークの中で、犯罪行為を非難し、その行為に対する責任をとらせ、生じた害を修復し、その上で、被害者と犯罪者を再びコミュニティーの中に組み入れるというものである。この制度はまた、犯罪者が被害者（または社会）に対して直接弁償するという意味で、再犯の可能性を低くすることができるし、また応報主義の下で犯罪者の人格を貶めるのではなく、犯罪行為は非難するが、犯罪者を社会に再び組み込もうとする点で、犯罪者の疎外感を生み出さず、手続に対する犯罪者の公正感を生ぜしめることが可能であるとされる。

犯罪の予防と鎮圧を効果的に行うためには、これからは地域と一体となった警察活動が必要であり、警察は住民に対するサービス機関として機能しなければ、社会の中で孤立した機関になってしまい、犯罪捜査にも支障が生じかねない。捜査

では、市民からの情報提供や協力が不可欠であることは言うまでもないからである。上記の5つの類型は、その中の1つの類型を警察活動は採らなければならないというものではなく、どの類型に重点が置かれるべきかとの観点から考えられなくてはならない。そして、この重点の置き方は、警察活動の諸段階で変わる。それにも関わらず、とりわけ Community policing や Restorative (Transformative) community policing は地域住民との密接な関係を保ちつつ、警察活動を行うべきであるとの考え方の現れであり、この Restorative Justice はまさにこの点を視野に入れた概念である。

2. Reintegrative Shaming と Restorative Justice

New South Wales の法律及び ACT の Canberra における RISE プロジェクトは、Braithwaite 教授の唱える『Reintegrative Shaming』という考え方に基づいている。これは、『Stigmatizing Shaming』と対置される概念であり、その内容は、犯罪者自身に悪としての烙印を張るのではなく、犯罪行為を非難し、犯罪者には依然として敬意を払い、逸脱行為を確認する儀式に続いて、その行為を非難する儀式を行い、逸脱行為が少年の地位に付随する主たる特徴となることを許さないことである。

Braithwaite 教授によれば、『Reintegrative Shaming』が上手く機能する条件として、例えば、犯罪者と犯罪行為を分離すること（罪を憎んで、人を憎まず）、Conference の進行者（facilitator）が一般の人々の利益だけでなく、全ての参加者の立場に立ちみることで、被害者、犯罪者そしてその家族の結びつきの強化（empowerment）、共感（empathy）と寛容の鼓舞、共同体への包容と再組み込みの儀式、Conference での力の不均衡の回避、同意に至った合意結果の履行をあげている（Braithwaite and Mugford, 1994）。理論上、shame をこのように Reintegrative Shaming と Stigmatizing Shaming に分けることは可能であろうが、日常生活では、shaming はどうしても humiliation という概念を伴うために、犯罪者を貶めた地位に置くおそれがあるし（J. Wundersitz と筆者との面談でのコメント）、shame が再組み込みの必要前提であるとの証拠もない（Allison Morris and Gabrielle Maxwell, Restorative Conferencing, ed. by M. Schliff and G. Bazemore, 2000）との見解も出されている。また、shaming と弁償との間にも何の関連性もないとする（id.）。すなわち、Conference の方が裁判所よりも、『正しい』種類の shame を生み出す場合が多いといわれても、それが弁償とどのような関係にあるかは証明がない。むしろ、その両者を関係付けるのは、Conference ではなく犯罪

者自身であるということは、少なくともいえる。このような理由から、South Australia や New Zealand では、Reintegrative Shaming という概念からのアプローチはされておらず、専ら Restorative Justice からのアプローチがされている。

John Braithwaite 教授による RISE Project は、加害者・被害者及びその関係者全員が共感（感応道交, empathy）を持つことの実現がねらいとなっていると考えられる。実は、そこには、Wundersitz 博士も述べているように、日本文化のエッセンスを取り入れようとする試みがみられるとあってよいが、この点が、New Zealand では必ずしも十分に理解されないため、そこでの少年手続には、依然として福祉の要素が残されているように思われる。Wagga Wagga のモデルは、そこでは失敗し立ち消えになったというよりも、その精神が西洋人にはよく理解されなかったと言えるのかもしれない。もっとも、上記のように、Wagga Wagga のモデルが現在、RISE Project として、ACT に引き継がれ、実験が行われているとあってよいであろう。

英語の shame には、否定的な意味が強く、肯定的・積極的な意味合いでの使い方がないため、Braithwaite 教授の Reintegrative Shaming という考え方は広くは受け入れられていないようである。彼の考え方によれば、恥の意識が権利義務関係の中に現れたときに、その意識が duty mind になるとしている。この duty mind は事後に生ずる感情であり、これからある行為をするのにブレーキをかける感情は、むしろ shame であろう。従って、結果に対する責任を問う場合には、duty mind を重視すべきことになるが、ある行為を行うべきでないとの意識はそれ以上に重視されるべきであろう。というのは、人間の相互関係から犯罪をなくすためには、恥の意識を重視し、それにより犯罪行動にブレーキをかけるように人間を育てなければならないからである。common law の法律制度による問題解決には限界があるのではないかと思われる。再犯率が高く、人間関係が相互に対立しあう関係があるために、人間関係の完成にはコモン・ローのシステムは十分な貢献はしなかった。また、問題の解決には、中央集権的な処理では不可能であり、事例毎の様々な違いに応じた対処が必要であるという考え方が出てくる。

つまり、Family Group Conference の制度は、心理学・社会学・政治学の観点からして、従来の考え方とは異なる方向を目指していると言える。それは一つのコンセプトの現れであり、そのコンセプトが何であるかを捉え、日本で何らかのコンセプトを取り入れるとすれば、それにもっともふさわしいシステムが何であるかを

考えるべきであろう。システムの違いそれ自体に目を奪われるのではなく、コンセプトとしてどう異なるのかに着目すれば、わが国においてもこれを利用することは十分可能であると言えるかもしれない。

マオリ族の中での少年の取り扱い方から、New Zealand は Family Group Conference という方法を選択した。そこでは、少年の養育は、少年を取り巻く成人の問題であり、少年が犯罪を犯したときも、家族をはじめとして、少年に関係する成人が加わって解決すべきであるとの理念が基本に据えられた。犯罪の問題を、単に犯罪者と被害者との関係、あるいは犯罪者と国家との権利・義務のコンセプトで捉えるのではなく、犯罪者を取り巻く共同体の問題として捉え、その者を取り巻く人間関係 (humanities, human relations) の中で解決しようというものである。西洋法の特質として、国家を中心に据えた犯罪のコントロール、犯罪と刑事法の法典化、犯罪を被害者もしくは神に対する行為と見るのではなく、国家に対する行為と見る考え方、専門化した警察機構の設置、弁償から離れて悪玉を善良な者から隔離する制度、そして基本的人権の保障があげられる。しかし、このような特質を持つ制度の下では、国家の利益は表に現れるが、実際に被害者の被った苦痛や損害は、せいぜい証人として間接的な形でしか表現されないし、もっと穿った見方をすれば、被害者は犯罪者を処罰するための証拠手段としての地位しか与えられていないともいえる。また、犯罪が行われた共同体の受けた影響は完全に無視されることになる。さらに、少年裁判所では、手続が専門家の間で進められるため、犯罪少年は事実解明の手段と処罰の対象とはなりえても、その者の心に衝撃を与えるような効果は期待できないし、機械的な手続の結果、処罰を受けているという殺伐とした、あるいはさらに社会に対して反感を抱くような効果が生じないとも限らない。少なくとも過去一世紀を振り返ってみれば、処罰の問題は、応報 (retribution) と社会復帰 (rehabilitation) との間での変動してきたし、その結果、手詰まりの、どうにもならない状況が生じてきている。

そこで、新しい観点としてでてきたのが、Restorative Justice の概念である。これは、犯罪者を restore し、壊れた共同体を restore するだけでなく、被害者も restore し、被害者を中心とした刑事手続を構築することを意味する。被害者の利益をもっとよく表現するためには、国家の介入の程度をできるだけ少なくする必要がある。そして、犯罪者を含めた、手続への参加者の尊厳が保たれ、安全な共同体を維持す

るためには、犯罪者が自己の罪を自覚し、責任をとり、それを自己の行動に反映させることが必要となる。上に述べたように、Maxwell と Morris によれば、Family Group Conference が開かれたり、犯罪者が弁償することにより、これらの目的が達成されるわけではない。むしろ、犯罪者が自己の犯罪行為を真摯に悔い、謝罪するという気持ちを持つことから問題の解決が始まる。このために、Caution や Conference での合意の中には必ず謝罪が要件として含まれている。

Restorative Justice の下では、上記の西洋法の特徴は退化であると考えるが、処罰の側面で国家の役割を全て否定するわけではない。国家は、このような手続にあっても基本権侵害の有無の監視をすべきであり、実際少数だが、共同体を守るために、収監しておかなければならない犯罪者がいることも確かである。また、犯罪者がでてきた家庭やその者が育った共同体を再構築するためには、国家の助力が必要なこともある。この限度で、国家の権限が働く余地は残っている。さらには、国家対個人という様相を明確には示さない場合であっても、個人に何らかの処罰、苦役、役務が科される場合には、それが犯罪行為と釣り合っているかどうか、適正な手続の下で科せられているかどうか、そして全体として公正だと見ることができるかどうかは常に問題となる。これを最終的に判断する権限を持つのは国家であり、そのために、Australia, New Zealand では、その少年法制度のいかなる段階にあっても、犯罪少年が少年裁判所の判断を選択できる道を開いている。逆に、犯罪少年がそれぞれの段階での合意事項に違反したり、履行しなかったり、さらに犯罪を犯したときには、最終の手段として、少年裁判所での訴追という手続が用意されている。最後に、Restorative Justice の概念は、犯罪という概念あるいは呼称をなくするわけでもない。誤った行為を犯罪と呼ぶことにより、犯罪者は自己の行為に対して責任をとり、弁償し、謝罪をしなければならないとの気持ちを抱かせるからである。

ところで、Reintegrative Shaming と Restorative Justice の間には若干の違いを見て取ることができる。前者は、応報主義とは異なり、悪い行為は辱めるべきだが、その行為を行った者まで貶めるべきではないとの考え方である。この論理から、行為者に対して、行動に対する非難の意図は伝えられるが、それと同時に、行為者との関係は維持される。このために、行為者が害を与えたことを認め、謝罪し、何らかの弁償や補償をした後で、共同体に再び入ることができる。これが、Reintegrative Shaming の核となる点である。この概念の中心となる shame は、行為者が周囲の者

から辱めを受けていると感じて生ずる恥ではなく、自分が行った行為が他者に害を与えたこと自体を、自分の心の中で恥ずかしいことと受け止めることを意味する。そのために、犯罪者が被害者等に謝罪することが必須の要件となる。

後者の Restorative Justice は、Reintegrative Shaming と相反する概念ではなく、それを含んで、さらに共同体まで視野を広げる概念であるといえよう。Restorative Justice は、まず、殺人などの特定の犯罪を除いて、犯罪少年などを正式手続（裁判手続）からはずし、その手続の外で処理しようとする（diversion）。犯罪者には、説明責任と結果責任を求め、community-based の処罰と処遇を行い、さらにその処罰と処遇を決めるに当たり、国家の代表者や被害者、そして犯罪者だけでなく、両者の家族をも含めることにより、当事者とその家族の関係の強化（empowerment）をも目的とする。この概念は、犯罪者に焦点を当てて、その者の更正、社会復帰をいかにして行うかに最大の関心を払うのではなく、犯罪者にはきちんと責任をとらせて処罰を科すという点で、Justice Model の立場に立っているといえる。Welfare Model の下で、犯罪者の社会復帰を意図した制度では、犯罪者が被害者や社会に与えた害については、考慮が払われず、従って、犯罪者は自らの行為が他者に及ぼした影響を自覚しないまま、社会復帰の訓練を受けることになる。そこでは、被害者の疎外感・無力感のみが増大し、生じた害は風化を待つしかないことになる。他方、犯罪者は自己の責任をとらされないために甘え、国家機関により社会復帰ができると判断されるまでは、その訓練を受けなければならないし、逆に、社会復帰が可能であると判断され、身柄が解放された後、再び犯罪を行っても、同じ過程が繰り返されるのみで、誰も責任をとることはない。犯罪を犯した者には十分な保護・養護を与えるが、犯罪を犯さない人間に対して、ほとんどなにも配慮をしないというのは、明らかにバランスを失っている。Welfare Model が、このように犯罪被害者の犠牲の上に無責任な社会、community の創出につながったことへの反省も含めて、Justice Model が提唱され、Restorative Justice が生まれてきた。

Reintegrative Shaming と Restorative Justice の概念は互いに排除しあうのではなく、補完しあるものと考えてよいであろう。両方とも、犯罪者に対して責任をとらせ、その罪を償わせるときに、被害者への謝罪を必須要件としている。ただ、後者の立場に立つ者が shaming という言葉を使わない理由は、上述のように、shame が他者からの批判・非難を意味し、そのために自分が貶められたという気持ちを引

き起こすという意味合いも持つために、それが restoration の内容と合致しないと考えられるからであろう。ただ、この点で、英語での shame と日本語での恥のコンセプトの不一致や、日本語での恥への十分な理解不足を解消する努力は、Braithwaite 教授よりもむしろ日本人に課された課題であるといえるだろう。

3. Family Group Conference

一見すると、Family Group Conference は被害者—犯罪者間の調停と類似しているようにも思われるが、両者はその基本理念や関連範囲が異なるので、区別して考えるべきであろう。前者は犯罪者への対応から生じてきた方策であり、後者は被害者救済の運動に起源があるからである。そのために、被害者—犯罪者調停は、いわゆる minor offence には必ずしも限定されないし、犯罪が行われた共同体のケアには十分な役割は果たさない。また、この調停は被害者の利益に第一の関心を置くのであって、被害者と犯罪者の両者にとっての状況をただすものではない。このため、調停は、犯罪者を社会に再度組み込むことよりは、被害の修繕に焦点を合わせた方策といえる。勿論、この調停が被害者が自分の言い分を述べる場を与え、被害者に賠償をする手段となっている点は共通している。だが、この Family Group Conference が Restorative Justice を基礎理論とし、単に被害者と犯罪者だけでなく、それぞれに関係する者の関与も許し、かつそこで到達した合意が履行されれば、刑事責任を問う手続は開始されてはならないこと（法律で規定されている）を考えると、両者は一応区別すべきものであろう。

犯罪者を貶めず、しかも被害者に償いをさせた上で、犯罪者を社会に再度組み込む具体的方法として、New Zealand・Australia は Family Group Conference を見いだした。裁判手続の場合によく示されるように、裁判で弁護人が被告人に代わって弁論を行い、そのために被告人が面前でなにが行われているのかを自覚しないまま、罰金や収監刑が科されても、そこには反省の気持ちなどが生ずる余地はないし、場合によっては、手続の公正さに疑問を持ち、それが却って、社会・国家に対する恨みとして残ることもあり得る。被害者—犯罪者間の仲裁にあっては、弁償・補償が最大の関心事となるため、金銭の多寡を巡る駆け引きが中心となり、自省心や介護の気持ちを生ぜしめる余地は、裁判の場合と同様、ありそうにない。Family Group Conference にあっては、事件の当事者以外の者が多く参加する可能性があるために

(例えば、両者の家族、親族、友人、そして周囲の者から尊敬されている者など)、とりわけ犯罪少年を除いた全員が成人となる場合が多いために、責任の押しつけや人格を貶める言動がされるおそれはある。他方で、被害者から加えられた害の影響を直接聞くことにより、それを犯罪者は自分のものとして追体験することができるし、自分の行動が家族や親族に及ぼした影響も知ることができる。この点で、Family Group Conference がどの程度成功するかは、Conference co-ordinator の技量と準備によるのかもしれない (Maxwell and Morris)。確かに、犯罪者が心から悔悟の気持ちを示しているのか、それとも単なる見せかけの表情なのかは、客観的な判断を下すのは難しい。とりわけ、少年の場合には、Conference の参加者はほぼ成人が中心となるため、その判断は難しいものとなろう。また、その少年の所属する文化や生活環境にもよるであろう。虚言を弄することに対して何の倫理的非難や罰の加えられないような文化や生活環境で育った少年にとって、このような Conference の状況は容易に通過できるものであろうし、逆の場合には、この Conference の場は、本当の試練の場となるであろう。

Australia と New Zealand の制度を比較してみると、両方とも Welfare Model から Justice Model に移行しているが、Australia では、Family Group Conference の開催に当たり、少年が罪を認めることが前提となっており、これを認めない場合には Conference が開催されないという点で、原則としてすべての事件を Conference にかける New Zealand の場合とは大きく異なっている。この点で、Australia は、罪の意識を明確にさせないまま、少年の福祉のみを考える Welfare Model からは脱却している。ただ、Welfare Model に近い New Zealand の場合も、国家の関与を最小限にとどめようとしている点では、South Australia 及び New South Wales の制度と共通した部分がある。これは、国家ではなく、事件の影響を受けた関係者が問題を解決するという考え方であり、少年やその家族・保護者、更に少年に影響力を持つ広いグループに力を与えることが重視されているからである。その少年だけでなく、彼の周囲の人間関係が自立的に律されることが可能となるような形で、関係者が介在しようとするねらいが、そこにはある。

上述したように、Restorative Justice と Reintegrative Shaming は理論上は区別されており、地域としても、South Australia や New Zealand は前者を主たる基礎とし、New South Wales や Australian Capital Territory は後者を主たる基礎としている。しか

し、実務上は、remorse と shame, そして reparation が重要な要素とされているのであり、少年法制度上、その点で大きな違いはみられない。この3つの要素に関していえば、これらの地域で共通しているのは、軽微な事件から重大な犯罪まで、その程度に応じた対処方法が用意されており、犯罪が重くなるに従って、この三つの要素を求める手続も community-wide なものとなるという点である。Formal Caution が与えられるときには、単にそれが犯罪者に対して直接与えられるだけでなく、事前の告知と事後の通知が書面で行われ、しかもそれは親や親族もしくは少年が選択した者の面前で与えられる。これは、犯罪者に shame と自覚を呼び起こす1つの手続である。(もともと、Wagga Wagga では、この Cautioning をもっと実効性のあるもの、別言すれば、Cautioning が効果を持たなかった少年に対して、Conference を開くという形で、Family Group Conference が導入されたのは事実である。Terry O'Connell) South Australia では、この段階で、警察官が Caution に加えて、罰を科すことも許されており、早期の段階で少年に、自己の行為の自覚を促す手続が用意されている。

New Zealand の文献によれば、Family Group Conference のために親戚を広大な地域(太平洋上の島々など)から集める苦勞が示されているし、また子供をどこに帰すかという問題もあるために、手続上の問題も多く存在している。しかし、彼らは、破綻した西洋の法制度を真実な人間関係の回復へ向かって改革する新たな局面を迎えたときに、このシステムを完成品として採用したのではなく、何か従来とは異なった見方を模索する中で、この制度を試みたのであった。そこでは、クラシックモダン的な考え方から、アジア的な考え方へと目が向けられたのである。前者が対症療法的であるのに対して、後者が包括的・全体的な解決を目指している点に着目したのであろう。

また、従来の犯罪学とは異なった観点が注目される。犯罪の原因を探るのではなく、同じ要因を持つ中で、多くの者がなぜ非行にでないのかという視点から、人間関係の形成、特に成長期の影響に中心をおいている。貧困であるが故に犯罪が発生するのではなく、むしろ逆に、それが健全な成長をもたらすこともあるということ忘れてはならないのである。1999年に出版された書物の中で、Maxwell 博士は、再犯を犯した少年とその親にインタビューをして、なぜ再度犯罪を犯したのかを、1) 幼児期の子供に影響を与えた事項、2) Family Group Conference で少年と親が感じた事項、3) その後、再犯に至るまでに影響した事項に分け、この3段階で原

因と思われる項目の特定をする研究を進めている（後掲資料参照）。これをみると、発達（成長）心理学に従った処理が行われていることがわかる。Family Group Conferenceにおいても、非行少年の親や親族が集まるのは、非行そのものよりも、その前段階、つまりどのような教育を受けて非行に至ったか、また子供を健全に育てる上で、どこで成功し、どこで失敗したかを確認することに意義があるのであって、ドイツのように、単に被害者と加害者が集まって和解するのとは異なるのである。

Australia や New Zealand の制度では、人間関係の回復が基本に据えられている。犯罪は偶々発生することであり、それに対する duty mind を考えることによって、人間関係の対立を持続させるようなことがあってはならないという考え方が根底にある。『罪を憎んで、人を憎まず』という理念が基本となっているのである。

4. Family Group Conference の効果

刑罰制度に関連する一つの重要な判断基準として、その制度が効果的に運用され、その結果犯罪が減少しているか、あるいは増加していないかが重要な問題となる。だが、とりわけ再犯率については、各地域で Conference の制度が採用されてからまだ日が浅いせいもあり、信頼できる資料がないというのが実情である。以下、RISE プロジェクトでの、被害者の観点、犯罪者の観点、再犯率について述べ、次に New Zealand について言及することにする。

a. 被害者の観点

Canberra での RISE プロジェクトでは、Conference に招かれた被害者のうち、86%が出席している（裁判所の場合、3%）。そして、出席した被害者に対して謝罪がされる割合は74%である（裁判所の場合、11%）。この謝罪がされた場合、被害者の83%は被害について、何らかの修復がされたと受け取っている（裁判所の場合、8%）。60%の被害者が、Conference の前は犯罪者に対して怒りを感じていたが、Conference のあと、その割合は30%に減少し、犯罪者に対して同条を感じた被害者は、23%から43%に上昇した。また、犯罪者が将来再び犯罪をするだろうと感じた被害者は31%であった（裁判所の場合、67%）。もっともこの点は、将来統計を集める必要がある。

b. 犯罪者の観点

まず、事件に費やされる時間は、Conference の場合が 71 分、裁判所の場合が 13 分であり、77% の犯罪少年が自分の意見を Conference で表明できたといい、54% の少年が裁判所で自分の意見を表明できたと述べた。また、犯罪者に対して敬意の払われた手続が進められたかについては、Conference と裁判所では割合に余り違いがなく 80% であった。Conference に出席した犯罪者の 47% は、Conference のあと法に対して敬意を持つようになったが、裁判所に行った者では、26% であった。このような数値から、プロジェクトの関係者は、Conference を利用すれば、犯罪が減少するであろう (could reduce crime) と述べているが、これらの反応は全て手続が終了して一週間以内での回答であり、これらの反応が実際の行為として現れるかどうかは、もっと長期にわたる追跡調査が必要であるとしている。

c. 再犯率

再犯の可能性について、Conference にいった犯罪少年の場合、92% が将来法を守ると答え、裁判所に行った少年で同じ回答をしたのは、76% であった。この数値自体の差は小さいが、Canberra での再犯の数で見た場合、大きな違いを生ずる。最後に、犯罪を犯してから 2 年の間に犯罪を犯す少年はほぼ 30% にのぼっている。この 16% の差が、もし間違いのないものだとすれば、再犯率を半分に減らすことができるだろうと関係者は述べている。

d. New Zealand の場合

Family Group Conference への出席率は、犯罪少年 96%、そのおやまたは養育者 98%、被害者またはその代理の者 46%、警察官 94%、Youth Advocate 59%、ソーシャル・ワーカー 62% である。Conference についての満足度は、警察官 91%、Youth Justice Co-ordinator 86%、少年 84%、その親 85%、出席した被害者 53% である。Maxwell と Morris によれば、1990-91 年に Family Group Conference に関係した少年の 2/5 は、再度犯罪を犯していないか、約 6 年後に初めて再度犯罪を犯している。せいぜい 4 分の 1 の者が、その期間内で絶えず犯罪を犯している。その調査結果では、たとえ幼い頃の悪い経験や前科などの重要な要素を考慮に入れても、Conference の『手続』の諸側面は再犯の機会を減少するのに貢献しているとの判断がされている。そして、Family Group Conference が、『Restorative Justice の効果を持っている場合には』、将来の犯罪率に大きな影響を与えることがあるのと証拠が示されているとのことである。もっとも、Conference 自体がこの成果を達成するわけでは必ずしもないこと

を、Maxwell と Morris は付け加えている。

IV. 日本の制度について

このような制度を概観した上で、日本の制度をみてみると、多くの点で問題を含んでいる。日本では、捜査の終了後、全件送致がされ、国と犯罪少年との間でのみ問題が処理される。このような制度では、事件が家庭裁判所に送致されてしまうと、すべてが社会から隔離・隠蔽されてしまう点で、可視性に問題があり、また被害者や社会の関与がすべて排除されてしまう点で、手続の公平性、公正さに問題があり、更に国家機関の判断が開示されたとしても、その判断を争う余地はなく、国家に全幅の信頼を置かなければならなくなるという点で、時代遅れのものである。更に、いわゆる『問題』行動をとる少年の取扱も不明確であり、家出や深夜徘徊、その他の真犯、不良行動への対処が極めて不十分な状況にある。

1948年に制定された少年法は、ほとんど改正されないまま現在に至っている。この法律が制定された当時は、1899年にアメリカ合衆国シカゴにおける少年裁判所設立の基礎となった国親思想がまだ勢力を保っていた。しかし、社会が落ち着くにつれて、この考え方が見直され、国が少年を親から引き離して面倒を見たり、教育を行うという制度に疑問が差し挟まれたとき、先進諸国の多くは新たな制度と理論的根拠を模索し始めた。それにも関わらず、日本では、少年は罪の多発、凶悪化、低年齢化に対してほとんど手当がされないままであった。その結果、全件送致などという、他国にはもはや見られないような制度が維持されてきた。(山下)。しかし、少年犯罪が国民の大きな関心事となり、政治問題化すると、政治家もようやく法制度と現実の乖離に目を向けて、法律の改正を図る方向に踏み出したように見える。

今回の改正案の主要な点として、少年鑑別所への収容期間の長期化(12週間)、事実認定手続への検察官の立ち会い、少年のための国選の付添人の選任、検察官による、事実誤認を理由とする抗告、3人の裁判官による合議制、被害者に対する家庭裁判所の決定の通知などがある。これにより、少年手続への適正手続の導入、被害者の利益の反映、事実認定手続の合理化が考慮されることになった。だが、それでも、国親思想という理念に立脚した制度であることにはかわりはなく、根本的解決にはならないであろう。

全件送致は、国親思想を最もよく体現する制度であるといつてよい。軽微な犯罪・非行にせよ、重大な犯罪にせよ、それをすべて国家に対する危険性の徴表と考へて、社会から隔離し、国の裁量により、その処遇を決めるからである。だが、経験や警察実務から、自己の行為が『不正なもの』であることを明確な形で自覚させられれば、その時から、そのような行為をしなくなる者もいれば、硬直した犯罪者もいることは判っている。これらの者がすべて、家庭裁判所に送られることになると、家庭から切り離され、教育の機会が失われ、そのために前者のような者まで立ち直ることができなくなるおそれがある。確かに、簡易送致という制度が事実上採られていて、警察段階で処理をしてしまうことも可能であるが、この場合には、警察官が少年を『戒める』程度のものであって、少年に対し、自己の行動を省みたり、責任をとらせるというような具体的な効果を保証するものではない。少年の時には感受性が強く、そのために更正が可能だといふのであれば、自己の行動のもつ問題性やその影響に気づかせ、責任をとらせる制度こそが必要であろう。裁判官が審判で、『なごやか』な態度で少年と接しても、このような効果はおよそ期待できない。この点で、検察官がまず事件の処理方法を選択する検察官先議制度は、成人事件での起訴猶予制度と対照させてみると、一考の余地はあるといえよう。それでも、少年は一定の種類の犯罪を除いては、できるだけ身柄の拘束をしないで処遇する方が適切であるとの観点からすれば（犯罪捜査規範 208 条）、やはり事件が警察に知覚され、摘発された段階で、少年の身柄をどう扱うべきかを考へておく必要は残る。

ところが、非行少年・要保護少年については、その発見から家庭裁判所もしくは児童相談所への通知及び送致までの手続については何の規定もない。また、司法警察員が少年の被疑事件について捜査を終了した後の手続は、少年法 41 条に規定があるが、捜査が行われている期間の少年の身柄の取扱は刑事訴訟法によっている。すなわち、捜査終了により、家庭裁判所に事件を送致するまでは、成人と同じ扱いを受けることになる。少年という一定の範疇の者に対する処理を少年法という制度で確立しながらも、事件が家庭裁判所に到達するまでは、成人と同じ手続で処理されるというのは、一貫性を欠いている（藤木英雄、刑事政策と少年法）。実務上問題があるだけでなく、理論上も齟齬を来している。

また、『虞犯』少年という範疇があり、保護者の正当な監督に服しない性癖があったり、正当な理由がなく家庭に寄りつかなくなったり、『犯罪性』のある者や『不

道徳な』者と交際し、もしくはいかがわしい場所に出入りしたり、自傷または他害行為をする性癖があるという事由があるために、将来犯罪を行ったり、刑罰法令に触れる行為をするおそれのある少年については、家庭裁判所あるいは児童相談所に通告することができる（少年法3条I③、6条）。だが、この虞犯性が見られる少年についての身柄の処理に関する規定は存在しない。少年法3条I③に掲げられている事由は、それ自体犯罪行為ではなく、将来犯罪を行うかもしれないという蓋然性に関連するため、その要件は適正手続の観点から、厳格に解することになるが、その基準も明らかではない。もっと重要な点は、この段階にある少年については、国家が介入してその少年の処遇を決めるよりも、少年を取り巻く成人、例えば親や親族の関与により虞犯性を低減、もしくは除去する方が適切ではないかと考えられることである。

日本では、このように将来の犯罪行為の可能性をも視野に入れた虞犯少年にまで、国家の介入による処理がされている。確かに、民間の有志者からなり、警察などから委嘱された少年補導員による補導という制度がある。少年警察活動要綱解説（警察庁編）によれば、補導とは非行少年を発見し、その少年に対して非行防止または福祉のために必要な捜査や調査を行い、家庭裁判所もしくは児童相談所等の機関への送致や通告を行い、あるいは警察限りの措置を採って、本人や保護者に必要な注意、助言、連絡を行うなどの活動をいうとされる。補導の対象となるのは、すべての類型の少年、つまり犯罪少年、触法少年、虞犯少年であるが、補導員は事実の内容に応じて、警察へ通報したり、連絡を取ったりする。これは、一種の community policing と言えなくもないが、少年の発見、通告、送致の後には、少年は community とは全く関係のないところで処遇を受けることになる。この補導員の活動が対象とする少年の行為が極めて軽微なものから犯罪行為まで含まれることを考えると、段階別の処理をし、軽微な不良行為については、少年補導員による発見の段階もしくは警察の段階で、Australia や New Zealand のように、少年に自立、自己規律を自覚させ、場合によっては被害者に弁償・補償をさせて、処分を終了できるような手続も必要であろう。

次に、少年の刑事責任年齢の問題がある。日本では、現行少年法の適用年齢を30歳にまで引き上げるべきだというような主張があるが、おそらくこのような考え方は限界を超えているといつてよいであろう。多くの人間が様々な関係を築いて

生活を送る社会では、個々人がその活動に責任を持つことが要求される。この責任には、ある行動に出る前に、自分がどのように行動すべきか、不正な行為にブレイキをかけることなどを考える責任と、結果責任の両方が含まれるわけであるが、人間が時を経るにつれて、様々な経験をし、そこから自立と責任感が生まれるというのであれば、それを教える時期は早いに越したことはない。ある個人が未熟で自立していないとの理由で、自己の犯罪行為と向き合わず、責任も負わせられないままにされれば、その者はますます無責任となり、成人したときに他害行為に出ない唯一の理由は、刑事処罰の威嚇があるからということになるだろう。だが、他者に敬意を払い、尊重する気持ちがなく、外部からの矯正や威嚇により行動が規律される社会が、人間関係の希薄で、自由の少ない社会につながっていくことは容易に想像できる。このような状況を生まないようにするためには、少年であっても、その責任を自覚させること、つまり、良い意味での社会化が不可欠である。少年の刑事責任年齢の決定は人為的であることは確かだが、そうであれば、理念的に決めるよりは、経験的判断に基づく方が合理的であろう。経験的判断を極めて重視する common law 諸国のように、7歳もしくは10歳未満は、この責任能力がないことを前提とし、14歳未満については責任能力がないと推定し、しかしその推定は国側の証明により破ることができる構造を採り、14歳以上は刑事責任があることを前提とし、17歳もしくは18歳以上はすべて成人として刑事手続にのせるべきであろうと考える。

最後に、家庭裁判所、少年裁判所について述べると、そこでの審判が対審構造化されることにより、少年の権利及び国の利益が十分に代弁されることにはなるかもしれないが、被害者の利益は国家の利益の陰に隠れてしまい、また弁護人と検察官の間での専門用語の交錯は、少年にとっては無意味な言葉がこだましているにすぎない状況が生まれる。そして、そこから導き出される結果は、形式的な権利義務関係の中での問題解決となろう。そこでは、身柄拘束によるにせよ、金銭賠償によるにせよ、この手続のために、逆に罪の意識を自覚しないまま、処分・処遇がされるという状況が現れる。Australia や New Zealand を初めとして、その他の、Family Group Conference を採用しているところでは、この点に気がついたからこそ、まだ感受性のある少年を裁判手続からできるだけはずして、Conference の中で、家族関係や community とのつながり、被害者と加害者との関係をできるだけ回復し、関係者全員がそれに真剣に取り組むことを求め、誰一人傍観者でいることを許さないよ

うな制度を求めたのだと言えよう。

V. まとめ--結論

アメリカ合衆国のシカゴで、社会復帰思想・教育刑思想に基づいて、初めて少年裁判所が設立されてから一世紀が経過した。この間に、社会は大きく変化し、それに伴って少年に対する見方も変化してきた。社会復帰・教育刑思想を揺るがす根本的な疑問が提起され、また適正手続の視点から、国親思想に基づき少年裁判所の審判手続自体も変化してきた。日本では、社会復帰思想が全盛の時に作成・制定された現行少年法は、その骨格となる部分については何の変化も見ないまま、現在に至っている。これに対して、他の先進諸国では、少年犯罪の多発化、凶悪化に直面して、方向には違いがあるが、様々な改正や改革を模索してきている。本稿では、その中の一つの制度として、Australia と New Zealand における新たな取り組みを紹介した。

少年が社会の中で弱い立場にいるのは確かである。親や周囲の成人から暴行や虐待などの積極的な害を受けたり、逆に十分なよう行くが与えられないなどの消極的な害を受けても、自らそのような事態を打開することはできない。そのために、国内でも法律が制定され、また国際的にも『児童の権利に関する条約』(Convention on the Rights of the Child) などが制定され、児童の利益の保護に関心が向けられてきている。他方、核家族化が進み、community における人間関係が薄くなってきている先進諸国、とりわけ、その都市部では、情報伝達を容易・安価にする科学技術の発達と、それに伴う情報の氾濫も手伝って、少年の非人間(性)化、孤独化、社会性の欠如、少年犯罪の低年齢化、多発化、凶悪化が生じてきている。このような事態にもまた、適切に対処する必要がある。少年犯罪に限らず、犯罪というものが様々な人間関係の中で生じ、その原因(と考えられるもの)も一般化できないからといって、単に社会の表面に現れた犯罪行為と犯罪者に、個別に対処すれば問題が解決するというものではない。厳罰化は、犯罪行為と比較して、これまでの刑罰が軽いと考えられるときには、正義の観点から、意味があろう。しかし、これだけでは、少年犯罪への適切な対処とは言えない。この考え方と対置するのが、Family Group Conference であるといつてよい。

すでに述べてきたように、できる限り少年の身柄を拘束しないことを前提に、

Family Group Conference は、少年に自己の罪を自覚させ、それを償わせた上で、社会の中で更正を図ろうとするものであり、国親思想に立脚する制度とは正反対のものである。この Family Group Conference の制度が将来にわたり成功するかどうかは、多くの要因が関係するために、単純な予測はできないし、それは我々の能力を超えているが、少なくとも理論上は、大きな意味を持っていることは間違いない。日本が、少年法制度の改正にあたり、表面的な改革に終わることなく、もっと根本的な変革が必要であるとすれば、このような制度も視野に入れた検討が不可欠であろう。もちろん、Family Group Conference は単独で機能しているのではなく、police Caution から少年裁判所による審判にいたる一連の過程の中で動いていることを忘れてはならず、少年の行為の程度に応じた対応を制度として考えることになる。

Family Group Conference が再犯率とどのような関係にあるのかの資料がほとんどないために、この観点からの是非の評価は現時点では困難である。ただ、Family Group Conference が従来の裁判手続とは異なった価値を持ち、それが具体的な少年の将来の生き方、家族のあり方、そして共同体のあり方に大きな影響を及ぼし、壊れた家族の修復、壊れた共同体の修復、被害者の修復に有用であるならば、少なくとも現在の少年法制度に代わるこのような制度の導入は望ましいといえるかもしれない。

いずれにせよ、Australia や New Zealand の制度と対比してわが国の制度を考えた場合、手続があまりにも大雑把で、犯罪の程度に応じた処理手続が整備されていないし、国家対犯罪少年の関係が貫徹されているために、被害者や共同体は全く疎外感を持つだけであり、犯罪少年は匿名性などの厚い保護が一方的に与えられているだけである。これでは、一般の人々は少年犯罪に対して無力感を持つだけであり、従って、大した犯罪行為でなければ見て見ぬ振りをする風潮が生まれるのも、もっともである。また、犯罪少年の側でも、警察での取調はきついかれども、家庭裁判所は『ちょろいもの』という気持ちになるのもまた、頷けるところである。

少年の問題や、ひいては犯罪の問題は、社会制度の一部を直せば解決するというものではなく、広い視野で社会の仕組みを考える必要がある。従って、Family Group Conference だけを観察したり、導入したところで、大きな効果は期待できないであろう。だが、InFormal Caution, Formal Caution, Family Group Conference, そして Youth Court という段階を踏んだ一つの大きな枠組みは、わが国の少年法制度の

改革について示唆に富んでいると言えようし、少年裁判所が最後のよりどころとしての役割を果たすのであれば、今の家庭裁判所のような手続は、憲法の観点からも、大きく変えなければならないように思われる。『和やかな』雰囲気の中で、犯罪少年と話をしても、自己の行った行為を正面から見据える契機にはならないであろう。Maxwell—Morris 論文が指摘するように、少年を不必要に humiliate しない限度で、自己の犯罪行為を省みて、悔いる (remorse) 状況を作り出すような手続が必須不可欠である。その点で、日本の少年法制度を支えている教育刑思想や社会復帰思想には、根本的な欠陥があるといつてよく、その考え方の転換を求めているのが、Australia と New Zealand の動きであると思う。

子供がその成長過程で、親や家庭、兄弟とどのような関係を結べば、よりよく社会化されるのかについては、現代ではもはや、人為的なプログラムを用意するしかないのかもしれない。South Australia では、裁判においても、Family Group Conference においても、parenting (親業) が重視されている。子育てに大きな関心と精力を注ぐことの重要性が、問題の起訴にあるように思われる。それは、単に興味深い解決方法であるというよりも、従来の裁判システムの変質を迫る制度の萌芽といえるのかもしれない。もっとも、現代社会では親が十分に parenting をできない事情があるが、それを補う役割として、grant-parenting という概念もある。市場論理に従って行動せざるを得ない父親、子供を保育園に預けてしまう母親の弱さを補う役割を、この grant-parenting は持っており、これを育てることが重要であると思われる。いずれにせよ、子供を上手に育てることができない場合に、家庭や学校、近隣が一体となって、子供の成長に関わるということはどういうことなのかを、実践的に身につけることができる仕組みができればよいのであろう。Wagga Wagga のモデルなどでは、少年の日常をよく知っていて、どのような状況にあるかを評価できる警察が、重要であるとされている。そうした事情を知らない福祉関係者の介入は、お仕着せとなろう。しかし、他方で、警察が中心になって手続を進めることに対しては、警察権力の拡大になるとの主張もある。

それでは、少年問題を真剣に検討し、打開策を実施するため資源を提供できる機関はどこなのであろうか。そのような機関は、国からできるだけ離れ、住民と同じ立場で行動できる機関でなければならないわけであるが、どの機関がそれにふさわしいのか、そのためには既存の機関はその体質を変える必要があるのではない

かというところまで、真剣に考える必要がある。一つの考え方として、犯罪の収益や罰金を、大蔵省以外の別の機関にプールしておき、そこからこの少年問題の解決に必要な資金を提供するというような方法も考えられるのである。

最後に、common law 諸国の幾つかの地域で見られるように、Family Group Conference を地域警察の一つの政策として行っているところがある (Bethlehem, PA; Minneapolis, MN; Thames Valley, England; Wagga Wagga, Australia (すでに終了) ; ACT, Australia (RISE Project として実験中)) での実験は、後に New South Wales 州の制度として取り込まれたとあってよい)。日本においても、ドイツ流の硬直した法治国家思想に依拠して、法律がなければこのような制度を実行することはできないと考える必要はないように思われる。もちろん、個々の制度の側面について、憲法の適正手続の観点から、その基準に合致しているかどうかを吟味することは当然に必要であるが、その作業がされれば、上記の地域と同様、地域警察の政策として、Family Group Conference のような制度を実施していくことは可能ではないかと思われる。とりわけ、少年が基本権及び適正手続の保障に懸念があるときに、公正な裁判所による判断を求めることができる道を開いておく場合には、なおさらそうであると言えよう。

本稿では、Australia と New Zealand の新しい少年法制度が、日本でのこれからの少年法制度の改革・運用を考えるにあたり、大変有意義であると考えて、個々に紹介したのであり、そのための研究費を提供してくれた社会安全研究財団に謝意を表する次第である。

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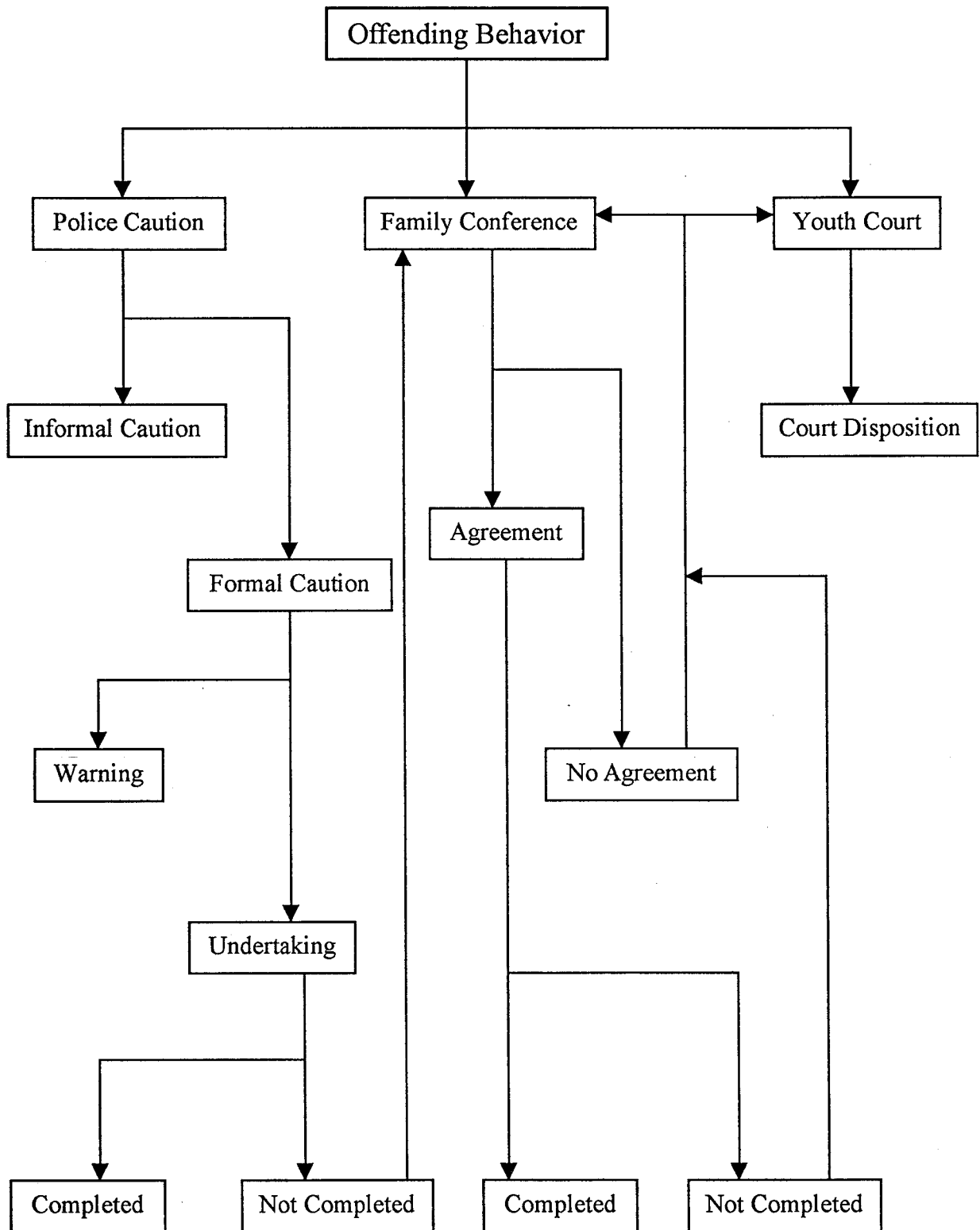
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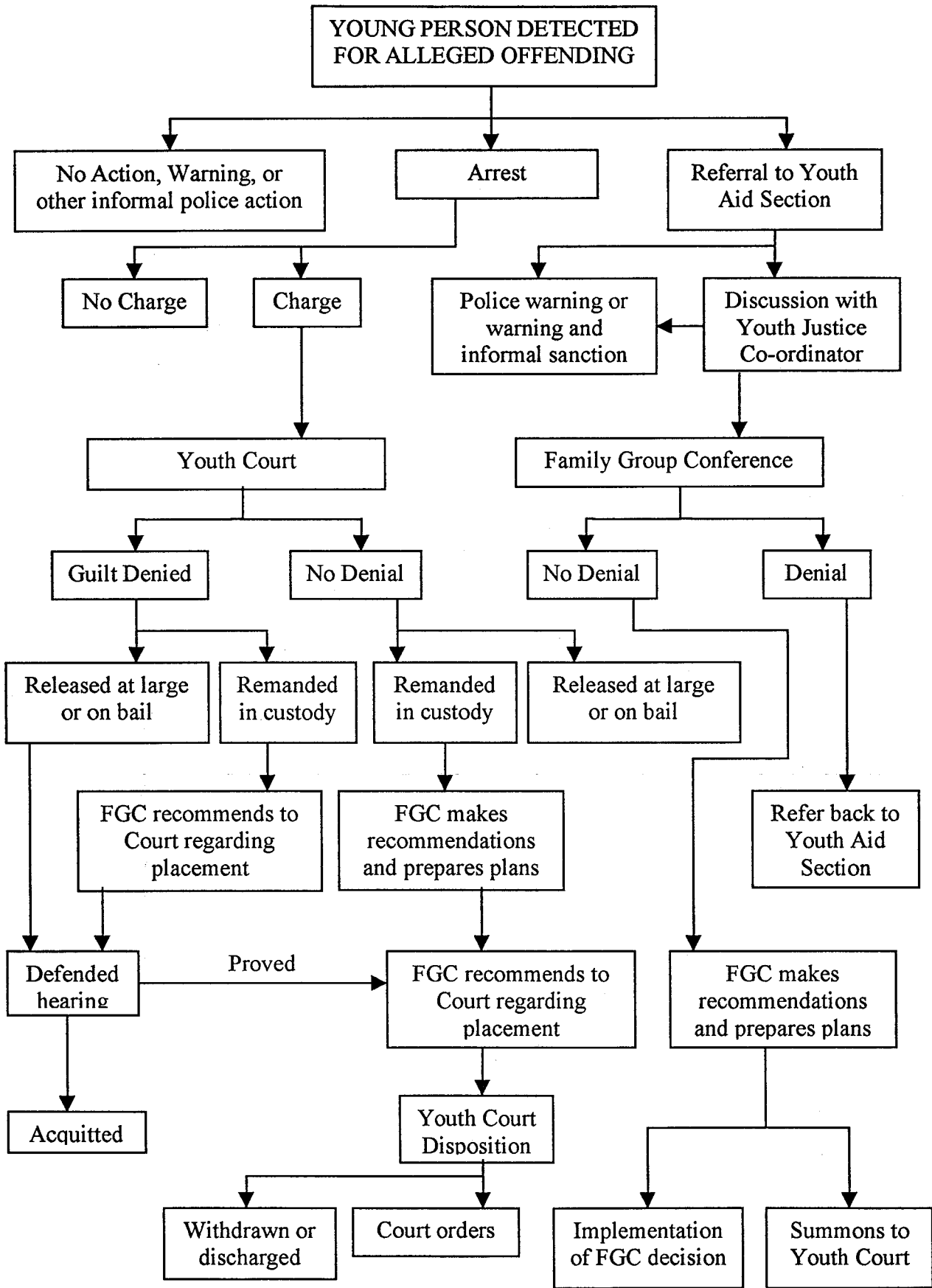
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2

POLICE STATISTICS

Juvenile offenders
1 January - 31 December 1998

TABLE 2.1 Police apprehensions: sex by major offence alleged

Offence group	Males		Female		Unknown		Total	
	No.	%	No.	%	No.	%	No.	%
Offences against the person (excl. sexual offences)	715	10.3	247	14.4	0	0	962	11.1
Sexual offences	95	1.4	4	0.2	0	0	99	1.1
Robbery and extortion	148	2.1	52	3.0	0	0	200	2.3
Burglary and break and enter	839	12.0	110	6.4	0	0	949	10.9
Fraud and misappropriation	69	1.0	32	1.9	0	0	101	1.2
Larceny and receiving	1,911	27.4	674	39.2	0	0	2,585	29.8
Damage property and environmental offences	732	10.5	142	8.3	0	0	874	10.1
Offences against good order	1,227	17.6	270	15.7	0	0	1,497	17.2
Drug offences	915	13.1	130	7.6	0	0	1,045	12.0
Driving offences	277	4.0	49	2.9	0	0	326	3.8
Other offences	43	0.6	8	0.5	0	0	51	0.6
Total	6,971	100.0	1,718	100.0	0	0	8,689	100.0
Percentage	80.2		19.8					

Juvenile offenders
1 January - 31 December 1998

TABLE 2.2a Police apprehensions: age by major offence alleged against males

Offence group	Males											Total	No.	%			
	10	11	12	13	14	15	16	17	Over 17	Unknown	Total						
Offences against the person (excl. sexual offences)																	
- Homicide *	0	0	0	0	1	0	1	3	0	0	0	0	0	0	0	5	0.1
- Serious assault *	0	2	4	5	12	24	34	31	6	0	0	0	0	0	0	118	1.7
- Other assault *	6	15	27	53	72	95	106	141	12	0	0	0	0	0	0	527	7.6
- Offences against the person - miscellaneous *	2	0	5	4	5	10	16	21	2	0	0	0	0	0	0	65	0.9
Sexual offences	2	2	14	9	19	14	21	14	0	0	0	0	0	0	0	95	1.4
Robbery and extortion																	
- Armed robbery*	0	0	1	2	5	4	10	16	0	0	0	0	0	0	0	38	0.5
- Unarmed robbery and extortion*	0	2	4	6	8	20	30	38	2	0	0	0	0	0	0	110	1.6
Burglary and break and enter	17	27	43	66	122	177	192	162	33	0	0	0	0	0	0	839	12.0
Fraud and misappropriation	0	0	0	5	6	9	17	26	6	0	0	0	0	0	0	69	1.0
Larceny and receiving																	
- Receiving/unlawful possession	0	1	7	19	23	48	56	69	4	0	0	0	0	0	0	227	3.3
- Larceny/illegal use of vehicle (motor and other)	7	5	20	41	63	83	112	118	5	0	0	0	0	0	0	454	6.5
- Interfere with a motor vehicle	0	1	6	6	12	18	22	29	0	0	0	0	0	0	0	94	1.3
- Larceny from a motor vehicle	2	1	7	13	28	38	63	69	1	0	0	0	0	0	0	222	3.2
- Larceny from shops	8	9	25	70	95	87	107	78	3	0	0	0	0	0	0	482	6.9
- Larceny - miscellaneous *	8	12	17	37	68	83	84	115	8	0	0	0	0	0	0	432	6.2
Damage property and environmental offences	23	32	62	67	102	132	162	144	8	0	0	0	0	0	0	732	10.5
Offences against good order																	
- Resist/hinder police	0	1	3	5	15	27	56	67	1	0	0	0	0	0	0	175	2.5
- Unlawful possession and/or use of weapons*	0	1	3	5	12	34	46	53	1	0	0	0	0	0	0	155	2.2
- Disorderly/offensive behaviour	0	1	9	17	26	25	44	87	4	0	0	0	0	0	0	213	3.1
- Indecent/offensive language	0	0	1	2	8	10	18	32	0	0	0	0	0	0	0	71	1.0
- Graffiti and related offences	0	0	6	14	22	25	27	31	3	0	0	0	0	0	0	128	1.8
- Public order offences - miscellaneous *	1	7	15	26	59	71	132	172	2	0	0	0	0	0	0	485	7.0
Drug offences	1	3	13	34	90	145	262	361	6	0	0	0	0	0	0	915	13.1
Driving offences																	
- Drink driving offences *	0	0	0	0	1	3	25	72	0	0	0	0	0	0	0	101	1.4
- Dangerous, reckless, or negligent driving	0	0	0	1	1	21	36	73	0	0	0	0	0	0	0	132	1.9
- Driving while licence suspended or cancelled	0	0	0	0	0	0	9	35	0	0	0	0	0	0	0	44	0.6
Other offences	1	1	3	9	6	9	7	7	0	0	0	0	0	0	0	43	0.6
Total	78	123	295	516	881	1,212	1,695	2,064	107	0	0	6,971	100.0				

*For details of the offences contained in these categories refer to Appendix - Age is at time of apprehension report.

Juvenile offenders
1 January - 31 December 1998

TABLE 2.2b Police apprehensions: age by major offence alleged against females

Offence group	Females											Total	
	10	11	12	13	14	15	16	17	Over 17	Unknown	No.		%
Offences against the person (excl. sexual offences)													
- Homicide *	0	0	0	0	0	0	1	1	0	0	2	0.1	
- Serious assault *	0	0	1	2	5	7	6	9	0	0	30	1.7	
- Other assault *	1	5	5	32	34	57	47	27	2	0	210	12.2	
- Offences against the person - miscellaneous *	0	0	1	0	0	2	2	0	0	0	5	0.3	
Sexual offences	0	0	0	0	1	2	1	0	0	0	4	0.2	
Robbery and extortion													
- Armed robbery *	0	0	3	1	3	2	1	3	0	0	13	0.8	
- Unarmed robbery and extortion *	0	0	2	5	2	9	12	7	2	0	39	2.3	
Burglary and break and enter	0	3	4	12	28	29	22	11	1	0	110	6.4	
Fraud and misappropriation	0	0	0	1	2	5	6	16	2	0	32	1.9	
Larceny and receiving													
- Receiving/unlawful possession	0	1	1	5	11	10	13	18	3	0	62	3.6	
- Larceny/illegal use of vehicle (motor and other)	0	0	6	7	21	22	13	5	1	0	75	4.4	
- Interfere with a motor vehicle	0	0	1	0	0	0	1	1	0	0	3	0.2	
- Larceny from a motor vehicle	0	1	1	0	5	6	2	5	0	0	20	1.2	
- Larceny from shops	1	7	10	64	91	115	65	43	3	0	399	23.2	
- Larceny - miscellaneous *	0	3	7	9	16	33	28	19	0	0	115	6.7	
Damage property and environmental offences	2	2	10	17	28	25	31	22	5	0	142	8.3	
Offences against good order													
- Resist/hinder police	0	0	2	0	8	15	11	11	1	0	48	2.8	
- Unlawful possession and/or use of weapons *	0	0	1	0	4	3	0	4	0	0	12	0.7	
- Disorderly/offensive behaviour	0	0	1	4	9	13	16	8	0	0	51	3.0	
- Indecent/offensive language	0	0	2	2	5	9	9	7	0	0	34	2.0	
- Graffiti and related offences	0	0	2	7	7	10	5	0	0	0	31	1.8	
- Public order offences - miscellaneous *	0	5	2	5	17	14	22	29	0	0	94	5.5	
Drug offences	0	0	4	11	24	31	25	35	0	0	130	7.6	
Driving offences													
- Drink driving offences *	0	0	0	0	0	1	4	15	0	0	20	1.2	
- Dangerous, reckless, or negligent driving	0	0	0	1	1	4	13	7	0	0	26	1.5	
- Driving while licence suspended or cancelled	0	0	0	0	0	0	0	2	1	0	3	0.2	
Other offences	0	0	0	1	2	3	2	0	0	0	8	0.5	
Total	4	27	66	186	324	427	358	305	21	0	1,718	100.0	

* For details of the offences contained in these categories refer to Appendix . Age is at time of apprehension report

Juvenile offenders
1 January - 31 December 1998

TABLE 2.3 Police apprehensions: racial appearance by major offence alleged

Offence group	Aboriginal		Non-Aboriginal		Unknown		Total	
	No.	%	No.	%	No.	%	No.	%
Offences against the person (excl. sexual offences)								
- Homicide*	2	0.2	5	0.1	0	0	7	0.1
- Serious assault*	30	2.5	107	1.8	11	0.8	148	1.7
- Other assault*	122	10.1	507	8.4	108	7.5	737	8.5
- Offences against the person - miscellaneous*	17	1.4	40	0.7	13	0.9	70	0.8
Sexual offences	3	0.2	82	1.4	14	1.0	99	1.1
Robbery and extortion								
- Armed robbery*	13	1.1	34	0.6	4	0.3	51	0.6
- Unarmed robbery and extortion*	47	3.9	90	1.5	12	0.8	149	1.7
Burglary and break and enter	185	15.4	608	10.0	156	10.9	949	10.9
Fraud and misappropriation	2	0.2	88	1.5	11	0.8	101	1.2
Larceny and receiving								
- Receiving/unlawful possession	38	3.2	214	3.5	37	2.6	289	3.3
- Larceny/illegal use of vehicle (motor and other)	86	7.1	392	6.5	51	3.6	529	6.1
- Interfere with a motor vehicle	19	1.6	70	1.2	8	0.6	97	1.1
- Larceny from a motor vehicle	36	3.0	178	3.0	28	2.0	242	2.8
- Larceny from shops	112	9.3	652	10.8	117	8.2	881	10.1
- Larceny - miscellaneous*	59	4.9	395	6.5	93	6.5	547	6.3
Damage property and environmental offences	140	11.6	555	9.2	179	12.5	874	10.1
Offences against good order								
- Resist/hinder police	46	3.8	141	2.3	36	2.5	223	2.6
- Unlawful possession and/or use of weapons*	17	1.4	121	2.0	29	2.0	167	1.9
- Disorderly/offensive behaviour	44	3.7	164	2.7	56	3.9	264	3.0
- Indecent/offensive language	22	1.8	66	1.1	17	1.2	105	1.2
- Graffiti and related offences	12	1.0	128	2.1	19	1.3	159	1.8
- Public order offences - miscellaneous*	65	5.4	387	6.4	127	8.9	579	6.7
Drug offences	60	5.0	798	13.2	187	13.0	1,045	12.0
Driving offences								
- Drink driving offences*	12	1.0	83	1.4	26	1.8	121	1.4
- Dangerous, reckless, or negligent driving	4	0.3	95	1.6	59	4.1	158	1.8
- Driving while licence suspended or cancelled	7	0.6	23	0.4	17	1.2	47	0.5
Other offences	4	0.3	29	0.5	18	1.3	51	0.6
Total	1,204	100.0	6,052	100.0	1,433	100.0	8,689	100.0

*For details of the offences contained in these categories refer to Appendix. Racial appearance, derived from police apprehension reports, reflects the opinion of the apprehending police officer.

Juvenile offenders
1 January - 31 December 1998

TABLE 2.4 Police apprehensions: sex and age by racial appearance

Racial appearance	Males										Over 17	Unknown	Total
	10	11	12	13	14	15	16	17	17	17			
Aboriginal	27	30	75	102	100	147	185	192	15	0	873		
Non-Aboriginal	31	64	154	328	633	897	1,247	1,521	76	0	4,951		
Unknown	20	29	66	86	148	168	263	351	16	0	1,147		
Total	78	123	295	516	881	1,212	1,695	2,064	107	0	6,971		

Racial appearance	Females										Over 17	Unknown	Total
	10	11	12	13	14	15	16	17	17	17			
Aboriginal	1	7	13	40	71	77	72	44	6	0	331		
Non-Aboriginal	3	16	39	108	208	277	223	218	9	0	1,101		
Unknown	0	4	14	38	45	73	63	43	6	0	286		
Total	4	27	66	186	324	427	358	305	21	0	1,718		

Racial appearance	Total										Over 17	Unknown	Total
	10	11	12	13	14	15	16	17	17	17			
Aboriginal	28	37	88	142	171	224	257	236	21	0	1,204		
Non-Aboriginal	34	80	193	436	841	1,174	1,470	1,739	85	0	6,052		
Unknown	20	33	80	124	193	241	326	394	22	0	1,433		
Total	82	150	361	702	1,205	1,639	2,053	2,369	128	0	8,689		

Racial appearance, derived from police apprehension reports, reflects the opinion of the apprehending police officer. Age is at time of apprehension report.

Juvenile offenders
1 January - 31 December 1998

TABLE 2.5a Police apprehensions: age by major offence alleged against persons of Aboriginal appearance

Offence group	Aboriginal											Total
	10	11	12	13	14	15	16	17	Over 17	Unknown		
Offences against the person (excl. sexual offences)	0	0	0	0	0	0	0	2	0	0	2	
- Homicide *	0	0	3	3	5	4	9	5	1	0	30	
- Serious assault *	2	1	6	20	15	29	23	25	1	0	122	
- Other assault *	0	0	2	3	0	0	6	5	1	0	17	
- Offences against the person - miscellaneous *	0	0	0	0	0	0	1	2	0	0	3	
Sexual offences	0	0	0	0	0	0	0	0	0	0	0	
Robbery and extortion	0	0	1	0	2	0	4	6	0	0	13	
- Armed robbery *	0	1	2	5	2	10	14	12	1	0	47	
- Unarmed robbery and extortion *	8	11	17	16	20	32	49	26	6	0	185	
Burglary and break and enter	0	0	0	1	0	0	0	0	1	0	2	
Fraud and misappropriation	0	0	0	0	0	0	0	0	0	0	0	
Larceny and receiving	0	1	0	9	4	7	7	8	2	0	38	
- Receiving/unlawful possession	3	3	5	11	15	16	17	15	1	0	86	
- Larceny/illegal use of vehicle (motor and other)	0	0	4	2	2	5	3	3	0	0	19	
- Interfere with a motor vehicle	1	1	4	5	6	9	5	5	0	0	36	
- Larceny from a motor vehicle	2	5	3	24	27	29	16	6	0	0	112	
- Larceny from shops	3	3	4	5	10	13	11	10	0	0	59	
- Larceny - miscellaneous *	7	7	19	17	21	21	25	21	2	0	140	
Damage property and environmental offences	0	0	2	0	5	9	15	13	2	0	46	
Offences against good order	0	0	2	2	1	4	6	1	1	0	17	
- Resist/hinder police	0	0	2	2	1	4	6	1	1	0	17	
- Unlawful possession and/or use of weapons *	0	0	5	3	8	7	9	11	1	0	44	
- Disorderly/offensive behaviour	0	0	1	1	4	3	6	7	0	0	22	
- Indecent/offensive language	0	0	0	3	2	4	1	2	0	0	12	
- Graffiti and related offences	1	3	5	8	16	9	9	14	0	0	65	
- Public order offences - miscellaneous *	0	1	2	4	5	12	16	19	1	0	60	
Drug offences	0	0	0	0	0	0	2	10	0	0	12	
Driving offences	0	0	0	0	0	0	2	3	0	0	4	
- Drink driving offences *	0	0	0	0	0	0	1	5	0	0	7	
- Dangerous, reckless, or negligent driving	0	0	0	0	0	0	2	5	0	0	7	
- Driving while licence suspended or cancelled	1	0	1	0	1	1	0	0	0	0	4	
Other offences	1	0	1	0	1	1	0	0	0	0	4	
Total	28	37	88	142	171	224	257	236	21	0	1,204	

* For details of the offences contained in these categories refer to Appendix . Age is at time of apprehension report.

Aboriginal appearance, derived from police apprehension reports, reflects the opinion of the apprehending police officer.

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TABLE 2.5b Police apprehensions: age by major offence alleged against persons of non-Aboriginal appearance

Offence group	Non-Aboriginal										Total	
	10	11	12	13	14	15	16	17	Over 17	Unknown		
Offences against the person (excl. sexual offences)												
- Homicide *	0	0	0	0	1	0	2	2	0	0	0	5
- Serious assault *	0	2	2	4	10	26	28	31	4	0	0	107
- Other assault *	3	18	22	51	77	103	110	113	10	0	0	507
- Offences against the person - miscellaneous *	1	0	3	1	3	10	9	12	1	0	0	40
Sexual offences	2	2	13	8	18	12	17	10	0	0	0	82
Robbery and extortion												
- Armed robbery*	0	0	3	3	6	6	6	10	0	0	0	34
- Unarmed robbery and extortion*	0	1	3	6	8	16	25	29	2	0	0	90
Burglary and break and enter	4	9	15	42	100	141	143	129	25	0	0	608
Fraud and misappropriation	0	0	0	3	8	13	19	38	7	0	0	88
Larceny and receiving												
- Receiving/unlawful possession	0	0	6	12	28	42	55	67	4	0	0	214
- Larceny/illegal use of vehicle (motor and other)	2	1	16	33	61	78	98	98	5	0	0	392
- Interfere with a motor vehicle	0	1	3	7	7	13	19	23	0	0	0	70
- Larceny from a motor vehicle	1	1	3	7	21	31	50	63	1	0	0	178
- Larceny from shops	6	11	18	89	140	147	139	99	3	0	0	652
- Larceny - miscellaneous *	4	6	15	35	56	85	80	109	5	0	0	395
Damage property and environmental offences	11	18	33	49	90	112	123	112	7	0	0	555
Offences against good order												
- Resist/hinder police	0	0	2	5	14	28	39	53	0	0	0	141
- Unlawful possession and/or use of weapons*	0	1	2	1	11	27	34	45	0	0	0	121
- Disorderly/offensive behaviour	0	1	3	15	20	19	39	64	3	0	0	164
- Indecent/offensive language	0	0	1	3	8	12	14	28	0	0	0	66
- Graffiti and related offences	0	0	7	14	25	28	26	25	3	0	0	128
- Public order offences - miscellaneous *	0	6	10	13	42	62	111	142	1	0	0	387
Drug offences	0	1	12	30	80	134	225	313	3	0	0	798
Driving offences												
- Drink driving offences *	0	0	0	0	1	4	23	55	0	0	0	83
- Dangerous, reckless, or negligent driving	0	0	0	1	1	19	28	46	0	0	0	95
- Driving while licence suspended or cancelled	0	0	0	0	0	0	3	19	1	0	0	23
Other offences	0	1	1	7	5	6	5	4	0	0	0	29
Total	34	80	193	436	841	1,174	1,470	1,739	85	0	0	6,052

* For details of the offences contained in these categories refer to Appendix . Age is at time of apprehension report.

Non-Aboriginal appearance, derived from police apprehension reports, reflects the opinion of the apprehending police officer.

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TABLE 2.5c Police apprehensions: age by major offence alleged against persons for whom racial appearance was not recorded

Offence group	Racial appearance not recorded											Total
	10	11	12	13	14	15	16	17	Over 17	Unknown		
Offences against the person (excl. sexual offences)												
- Homicide *	0	0	0	0	0	0	0	0	0	0	0	0
- Serious assault *	0	0	0	0	2	1	3	4	1	0	0	0
- Other assault *	2	1	4	14	14	20	20	30	3	0	0	108
- Offences against the person - miscellaneous *	1	0	1	0	2	2	3	4	0	0	0	13
Sexual offences	0	0	1	1	2	4	4	2	0	0	0	14
Robbery and extortion												
- Armed robbery *	0	0	0	0	0	0	1	3	0	0	0	4
- Unarmed robbery and extortion *	0	0	1	0	0	3	3	4	1	0	0	12
Burglary and break and enter	5	10	15	20	30	33	22	18	3	0	0	156
Fraud and misappropriation	0	0	0	2	0	1	4	4	0	0	0	11
Larceny and receiving												
- Receiving/unlawful possession	0	1	2	3	2	9	7	12	1	0	0	37
- Larceny/illegal use of vehicle (motor and other)	2	1	5	4	8	11	10	10	0	0	0	51
- Interfere with a motor vehicle	0	0	0	0	3	0	1	4	0	0	0	8
- Larceny from a motor vehicle	0	0	1	1	6	4	10	6	0	0	0	28
- Larceny from shops	1	0	14	21	19	26	17	16	3	0	0	117
- Larceny - miscellaneous *	1	6	5	6	18	18	21	15	3	0	0	93
Damage property and environmental offences	7	9	20	18	19	24	45	33	4	0	0	179
Offences against good order												
- Resist/hinder police	0	1	1	0	4	5	13	12	0	0	0	36
- Unlawful possession and/or use of weapons *	0	0	0	2	4	6	6	11	0	0	0	29
- Disorderly/offensive behaviour	0	0	2	3	7	12	12	20	0	0	0	56
- Indecent/offensive language	0	0	1	0	1	4	7	4	0	0	0	17
- Graffiti and related offences	0	0	1	4	2	3	5	4	0	0	0	19
- Public order offences - miscellaneous *	0	3	2	10	18	14	34	45	1	0	0	127
Drug offences	1	1	3	11	29	30	46	64	2	0	0	187
Driving offences												
- Drink driving offences *	0	0	0	0	0	0	4	22	0	0	0	26
- Dangerous, reckless, or negligent driving	0	0	0	1	1	6	20	31	0	0	0	59
- Driving while licence suspended or cancelled	0	0	0	0	0	0	4	13	0	0	0	17
Other offences	0	0	1	3	2	5	4	3	0	0	0	18
Total	20	33	80	124	193	241	326	394	22	0	0	1,433

*For details of the offences contained in these categories refer to Appendix.

Racial appearance, derived from police apprehension reports, reflects the opinion of the apprehending police officer. Age is at time of apprehension report.

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TABLE 2.6 Police apprehensions: method of apprehension and sex by age

Age in years	Method of Apprehension					
	Arrest		Total		Report	
	Male	Female	Male	Female	Male	Female
10	7	0	7	71	4	75
11	24	1	25	99	26	125
12	47	16	63	248	50	298
13	118	30	148	398	156	554
14	199	70	269	682	254	936
15	336	125	461	876	302	1,178
16	545	115	660	1,150	243	1,393
17	731	88	819	1,333	217	1,550
Over 17	46	6	52	61	15	76
Unknown	0	0	0	0	0	0
Total	2,053	451	2,504	4,918	1,267	6,185

Age is at time of apprehension report.

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TABLE 2.7 Police apprehensions: racial appearance by method of apprehension

Method of Apprehension	Aboriginal		Non-Aboriginal		Unknown		Total	
	No.	%	No.	%	No.	%	No.	%
Arrest	610	50.7	1,633	27.0	261	18.2	2,504	28.8
Report	594	49.3	4,419	73.0	1,172	81.8	6,185	71.2
Total	1,204	100.0	6,052	100.0	1,433	100.0	8,689	100.0

Racial appearance, derived from police apprehension reports, reflects the opinion of the apprehending police officer.

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TABLE 2.8 Police apprehensions: sex and age by type of action

Type of Action	Males										Total
	10	11	12	13	14	15	16	17	Over 17	Unknown	
Formal caution	32	47	122	165	324	409	486	580	21	0	2,186
Transfer to family conference	30	32	59	110	173	233	259	239	8	0	1,143
Transfer to Youth Court	12	35	94	211	351	521	803	982	65	0	3,074
Withdrawn	1	6	14	19	13	25	57	61	13	0	209
Unknown	3	3	6	11	20	24	90	202	0	0	359
Total	78	123	295	516	881	1,212	1,695	2,064	107	0	6,971
	Females										
Formal caution	2	16	29	98	120	146	106	101	2	0	620
Transfer to family conference	2	7	4	36	87	82	62	36	4	0	320
Transfer to Youth Court	0	4	29	46	97	176	152	134	13	0	651
Withdrawn	0	0	3	6	11	12	17	8	2	0	59
Unknown	0	0	1	0	9	11	21	26	0	0	68
Total	4	27	66	186	324	427	358	305	21	0	1,718
	Total										
Formal caution	34	63	151	263	444	555	592	681	23	0	2,806
Transfer to family conference	32	39	63	146	260	315	321	275	12	0	1,463
Transfer to Youth Court	12	39	123	257	448	697	955	1,116	78	0	3,725
Withdrawn	1	6	17	25	24	37	74	69	15	0	268
Unknown	3	3	7	11	29	35	111	228	0	0	427
Total	82	150	361	702	1,205	1,639	2,053	2,369	128	0	8,689

Age is at time of apprehension report.

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TABLE 2.9 Police apprehensions: type of action by major offence alleged
Summary of all offence groups

Offence group	Formal caution	Transfer to family conference	Transfer to Youth Court	Withdrawn	Unknown	Total
Offences against the person (excl. sexual offences)	224	176	506	35	21	962
Sexual offences	13	23	40	20	3	99
Robbery and extortion	12	11	165	8	4	200
Burglary and break and enter	176	245	472	26	30	949
Fraud and misappropriation	35	19	39	6	2	101
Larceny and receiving	781	467	1,214	76	47	2,585
Damage property and environmental offences	309	191	335	22	17	874
Offences against good order	692	180	549	46	30	1,497
Drug offences	524	138	340	28	15	1,045
Driving offences	13	1	55	0	257	326
Other offences	27	12	10	1	1	51
Total	2,806	1,463	3,725	268	427	8,689

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TABLE 2.10 Police apprehensions: type of action by major offence alleged
Offences against the person (excluding sexual offences)

Offence group	Formal caution	Transfer to family conference	Transfer to Youth Court	Withdrawn	Unknown	Total
Murder	0	0	0	0	0	0
Attempted murder	0	0	4	0	0	4
Conspiracy to murder	0	0	0	0	0	0
Manslaughter	0	0	0	0	0	0
Driving causing death	0	0	3	0	0	3
Other homicide	0	0	0	0	0	0
Assault occasioning grievous bodily harm	0	2	10	0	1	13
Assault occasioning actual bodily harm	18	33	73	2	1	127
Assault with intent	0	0	3	0	0	3
Other major assault	0	0	4	1	0	5
Common assault						
- of a male	122	72	171	17	7	389
- of a female	63	47	105	9	7	231
- sex of victim unspecified	0	0	1	0	0	1
Common assault of family member	5	6	18	4	1	34
Other minor assault	0	0	0	0	0	0
Assault police	9	11	59	1	2	82
Kidnapping and abduction	0	0	1	0	0	1
Hijacking	0	0	0	0	0	0
Defamation and libel	0	0	0	0	0	0
Stalking	0	0	0	0	0	0
Other offences against the person	7	5	54	1	2	69
Total	224	176	506	35	21	962

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TABLE 2.11 Police apprehensions: type of action by major offence alleged
Sexual offences

Offence group	Formal caution	Transfer to family conference	Transfer to Youth Court	Withdrawn	Unknown	Total
Rape	1	2	14	8	3	28
Attempted rape	0	0	0	0	0	0
Indecent assault	4	15	19	5	0	43
Unlawful sexual intercourse	2	5	6	6	0	19
Attempted unlawful sexual intercourse	0	0	0	0	0	0
Incest	0	0	0	0	0	0
Indecent behaviour/exposure	5	1	1	0	0	7
Gross indecency	0	0	0	1	0	1
Persistent sexual abuse of a child	0	0	0	0	0	0
Other sexual offences	1	0	0	0	0	1
Total	13	23	40	20	3	99

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TABLE 2.12 Police apprehensions: type of action by major offence alleged
Robbery and extortion

Offence group	Formal caution	Transfer to family conference	Transfer to Youth Court	Withdrawn	Unknown	Total
Robbery with a firearm	2	0	10	0	0	12
Robbery with other weapon	1	1	34	2	1	39
Robbery - weapon type unknown	0	0	0	0	0	0
Unarmed robbery with violence	4	7	52	2	2	67
Unarmed robbery with no violence	5	3	66	4	1	79
Extortion	0	0	3	0	0	3
Total	12	11	165	8	4	200

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TABLE 2.13 Police apprehensions: type of action by major offence alleged
Burglary and break and enter

Offence group	Formal caution	Transfer to family conference	Transfer to Youth Court	Withdrawn	Unknown	Total
Burglary	0	2	27	0	1	30
Break and enter dwellings	39	84	170	9	9	311
Break and enter dwellings with intent	4	8	20	2	0	34
Break and enter dwellings at night with intent	0	0	0	0	0	0
Break and enter shops	26	40	87	2	5	160
Break and enter shops with intent	2	1	9	1	0	13
Break and enter schools	54	50	42	4	1	151
Break and enter schools with intent	3	7	4	0	0	14
Break and enter other building	40	44	85	4	13	186
Break and enter other building with intent	4	3	12	1	1	21
Break and enter building - type unknown	1	0	0	0	0	1
Break and enter with intent - building type unknown	1	0	1	0	0	2
Offences related to break and enter	2	6	15	3	0	26
Total	176	245	472	26	30	949

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TABLE 2.14 Police apprehensions: type of action by major offence alleged
Fraud and misappropriation

Offence group	Court				Total
	Formal caution	Transfer to family conference	Transfer to Youth	Withdrawn	
False pretences					
- credit/debit cards	1	1	5	1	9
- cheques	0	1	4	0	5
- other	9	2	8	1	20
- type unknown	0	0	0	0	0
Forge and utter (excluding cheques)	0	0	0	1	1
False statement - government benefits	0	0	0	0	0
Other fraud with respect to government benefits	0	0	0	0	0
Other fraud	6	2	11	0	20
Misappropriation/embezzlement	19	12	10	1	42
Counterfeiting	0	1	1	2	4
Total	35	19	39	6	101

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TABLE 2.15 Police apprehensions: type of action by major offence alleged
Larceny and receiving

Offence group	Formal caution	Transfer to family conference	Transfer to Youth Court	Withdrawn	Unknown	Total
Receiving	57	30	86	11	0	184
Unlawful possession of stolen goods	27	12	64	2	0	105
Handling of stolen goods - other	0	0	0	0	0	0
Larceny of a motor vehicle	2	3	13	0	1	19
Illegal use of a motor vehicle	72	76	254	13	6	421
Interfere with a motor vehicle	22	12	58	3	2	97
Larceny from a motor vehicle	56	37	135	9	5	242
Larceny or illegal use of other vehicle	19	24	40	6	0	89
Larceny from the person	0	1	17	0	0	18
Larceny of livestock	1	4	1	0	0	6
Larceny from shops	350	168	332	17	14	881
Other larceny	169	95	205	15	17	501
Larceny - type unknown	6	5	9	0	2	22
Total	781	467	1,214	76	47	2,585

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TABLE 2.16 Police apprehensions: type of action by major offence alleged
Damage property and environmental offences

Offence group	Formal caution	Transfer to family conference	Transfer to Youth Court	Withdrawn	Unknown	Total
Arson or damage by explosives						
- dwellings	0	6	0	0	0	6
- shops	0	0	0	0	0	0
- schools	4	9	7	0	0	20
- factory/warehouse	0	0	0	0	0	0
- motor vehicle	1	6	3	1	0	11
- other/not known	17	12	12	0	3	44
Damage property (not arson or explosives)						
- dwellings	60	37	90	10	3	200
- shops	18	13	23	2	1	57
- schools	46	26	18	1	0	91
- factory/warehouse	0	0	1	0	0	1
- motor vehicle	52	38	71	5	2	168
- other/not known	106	42	107	3	8	266
Other property damage offences	5	1	3	0	0	9
Environmental offences	0	1	0	0	0	1
Total	309	191	335	22	17	874

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TABLE 2.17 Police apprehensions: type of action by major offence alleged
Offences against good order

Offence group	Formal caution	Transfer to family conference	Transfer to Youth Court	Withdrawn	Unknown	Total
Resist/hinder police	81	15	113	5	9	223
Conspiracy	2	3	3	0	0	8
Offences against justice procedures	15	9	7	1	1	33
Unlawful possession/use of firearms	10	3	4	0	1	18
Unlawful possession/use of bombs	0	0	0	0	0	0
Unlawful possession/use of other weapons	60	18	61	10	0	149
Other weapon offences	0	0	1	0	0	1
Pornography and censorship offences	3	0	1	0	0	4
Liquor licensing offences	139	22	37	4	3	205
Betting and gaming offences	0	0	0	0	0	0
Trespassing offences	98	39	76	6	10	229
Consorting	0	0	4	0	0	4
Prostitution offences	0	0	1	0	0	1
Found with intent to commit a crime	0	0	2	0	0	2
Indecent/offensive language	53	10	40	2	0	105
Disorderly behaviour	116	26	103	4	4	253
Offensive behaviour	6	2	3	0	0	11
Loitering	13	3	13	3	0	32
Urinating/defecating in public	14	0	6	1	0	21
Graffiti and related offences	68	28	57	5	1	159
Other offences against good order	14	2	17	5	1	39
Total	692	180	549	46	30	1,497

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TABLE 2.18 Police apprehensions: type of action by major offence alleged
Drug offences

Offence group	Formal caution	Transfer to family conference	Transfer to Youth Court	Withdrawn	Unknown	Total
Possess/use cannabis	329	76	167	7	4	583
Possess/use other drug	21	5	12	2	2	42
Possess/use drug - type unknown	0	0	0	0	0	0
Import/export cannabis	0	0	0	0	0	0
Import/export other drug	0	0	0	0	0	0
Sell/possess for sale cannabis	14	10	10	2	1	37
Sell/possess for sale other drug	0	5	12	0	1	18
Sell/possess for sale - drug type unknown	0	0	0	0	0	0
Produce/manufacture cannabis	19	11	13	2	2	47
Produce/manufacture other drug	1	1	0	0	0	2
Produce/manufacture - drug type unknown	0	0	0	0	0	0
Fraudulent prescription offences	1	1	1	0	0	3
Possess implements for drug use	139	28	123	15	5	310
Other drug offences	0	1	2	0	0	3
Total	524	138	340	28	15	1,045

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TABLE 2.19 Police apprehensions: type of action by major offence alleged
Driving offences

Offence group	Formal caution	Transfer to family conference	Transfer to Youth Court	Withdrawn	Unknown	Total
Driving under the influence of alcohol/drugs	0	0	5	0	13	18
Exceed prescribed concentration of alcohol	0	0	11	0	89	100
Refuse to supply blood sample	0	0	0	0	1	1
Refuse breath/alcotest	0	0	0	0	2	2
Dangerous or reckless driving	12	1	20	0	125	158
Driving while licence suspended or cancelled	1	0	19	0	27	47
Driving without a licence	0	0	0	0	0	0
Total	13	1	55	0	257	326

The high number in the 'unknown' action category reflects the fact that many driving offences by-pass the normal screening process and are directed straight to court.

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TABLE 2.20 Police apprehensions: type of action by major offence alleged
Other offences

Offence group	Formal caution	Transfer to family conference	Transfer to Youth Court	Withdrawn	Unknown	Total
Banking, financial & insurance offences	0	0	0	0	0	0
Taxation and stamp duty (excluding excise)	0	0	0	0	0	0
Posts, telegraphs and telecommunications	0	0	0	0	0	0
Customs, excise, imports/exports (non-drugs)	0	0	0	0	0	0
Immigration, passports, etc.	0	0	0	0	0	0
Electoral offences	0	0	0	0	0	0
Air navigation, airports and aircraft operations	0	0	0	0	0	0
Health, mental health, quarantine, food standards etc.	0	0	0	0	0	0
Bankruptcy	0	0	0	0	0	0
Copyright and patents	0	0	0	0	0	0
Offences in custody (against prison rules)	0	0	0	0	0	0
Other offences	27	12	10	1	1	51
Total	27	12	10	1	1	51

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TABLE 2.21a Police apprehensions: type of action by major offence alleged
against males

Offence group	Males					Total
	Formal caution	Transfer to family conference	Transfer to youth court	Withdrawn	Unknown	
Offences against the person (excl. sexual offences)						
- Homicide*	0	0	5	0	0	5
- Serious assault*	16	29	68	3	2	118
- Other assault*	146	92	252	25	12	527
- Offences against the person - miscellaneous*	7	4	52	1	1	65
Sexual offences	12	23	39	18	3	95
Robbery and extortion						
- Armed robbery*	3	0	33	1	1	38
- Unarmed robbery and extortion*	6	6	90	5	3	110
Burglary and break and enter	141	212	437	22	27	839
Fraud and misappropriation	19	11	32	5	2	69
Larceny and receiving						
- Receiving/unlawful possession	62	32	124	9	0	227
- Larceny/illegal use of vehicle (motor and other)	75	83	277	12	7	454
- Interfere with a motor vehicle	22	12	55	3	2	94
- Larceny from a motor vehicle	52	36	123	8	3	222
- Larceny from shops	171	90	208	8	5	482
- Larceny - miscellaneous*	139	84	187	8	14	432
Damage property and environmental offences	262	154	281	20	15	732
Offences against good order						
- Resist/hinder police	63	9	93	2	8	175
- Unlawful possession and/or use of weapons*	65	19	60	10	1	155
- Disorderly/offensive behaviour	107	18	81	3	4	213
- Indecent/offensive language	36	9	24	2	0	71
- Graffiti and related offences	48	24	51	4	1	128
- Public order offences - miscellaneous*	249	65	140	18	13	485
Drug offences	452	121	306	22	14	915
Driving offences						
- Drink driving offences*	0	0	12	0	89	101
- Dangerous, reckless, or negligent driving	9	1	17	0	105	132
- Driving while licence suspended or cancelled	0	0	18	0	26	44
Other offences	24	9	9	0	1	43
Total	2,186	1,143	3,074	209	359	6,971

* For details of the offences contained in these categories refer to Appendix.

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TABLE 2.21b Police apprehensions: type of action by major offence alleged
against females

Offence group	Females					Total
	Formal caution	Transfer to family conference	Transfer to Youth Court	Withdrawn	Unknown	
Offences against the person (excl. sexual offences)						
- Homicide*	0	0	2	0	0	2
- Serious assault*	2	6	22	0	0	30
- Other assault*	53	44	102	6	5	210
- Offences against the person - miscellaneous*	0	1	3	0	1	5
Sexual offences	1	0	1	2	0	4
Robbery and extortion						
- Armed robbery*	0	1	11	1	0	13
- Unarmed robbery and extortion*	3	4	31	1	0	39
Burglary and break and enter	35	33	35	4	3	110
Fraud and misappropriation	16	8	7	1	0	32
Larceny and receiving						
- Receiving/unlawful possession	22	10	26	4	0	62
- Larceny/illegal use of vehicle (motor and other)	18	20	30	7	0	75
- Interfere with a motor vehicle	0	0	3	0	0	3
- Larceny from motor vehicle	4	1	12	1	2	20
- Larceny from shops	179	78	124	9	9	399
- Larceny - miscellaneous*	37	21	45	7	5	115
Damage property and environmental offences	47	37	54	2	2	142
Offences against good order						
- Resist/hinder police	18	6	20	3	1	48
- Unlawful possession and/or use of weapons*	5	2	5	0	0	12
- Disorderly/offensive behaviour	15	10	25	1	0	51
- Indecent/offensive language	17	1	16	0	0	34
- Graffiti and related offences	20	4	6	1	0	31
- Public order offences - miscellaneous*	49	13	28	2	2	94
Drug offences	72	17	34	6	1	130
Driving offences						
- Drink driving offences*	0	0	4	0	16	20
- Dangerous, reckless, or negligent driving	3	0	3	0	20	26
- Driving while licence suspended or cancelled	1	0	1	0	1	3
Other offences	3	3	1	1	0	8
Total	620	320	651	59	68	1,718

*For details of the offences contained in these categories refer to Appendix.

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TABLE 2.21c Police apprehensions: type of action by major offence alleged against all persons

Offence group	Total					Total
	Formal caution	Transfer to family conference	Transfer to Youth Court	Withdrawn	Unknown	
Offences against the person (excl. sexual offences)						
- Homicide*	0	0	7	0	0	7
- Serious assault *	18	35	90	3	2	148
- Other assault *	199	136	354	31	17	737
- Offences against the person - miscellaneous *	7	5	55	1	2	70
Sexual offences	13	23	40	20	3	99
Robbery and extortion						
- Armed robbery*	3	1	44	2	1	51
- Unarmed robbery and extortion*	9	10	121	6	3	149
Burglary and break and enter	176	245	472	26	30	949
Fraud and misappropriation	35	19	39	6	2	101
Larceny and receiving						
- Receiving/unlawful possession	84	42	150	13	0	289
- Larceny/illegal use of vehicle (motor and other)	93	103	307	19	7	529
- Interfere with a motor vehicle	22	12	58	3	2	97
- Larceny from motor vehicle	56	37	135	9	5	242
- Larceny from shops	350	168	332	17	14	881
- Larceny - miscellaneous *	176	105	232	15	19	547
Damage property and environmental offences	309	191	335	22	17	874
Offences against good order						
- Resist/hinder police	81	15	113	5	9	223
- Unlawful possession and/or use of weapons*	70	21	65	10	1	167
- Disorderly/offensive behaviour	122	28	106	4	4	264
- Indecent/offensive language	53	10	40	2	0	105
- Graffiti and related offences	68	28	57	5	1	159
- Public order offences - miscellaneous *	298	78	168	20	15	579
Drug offences	524	138	340	28	15	1,045
Driving offences						
- Drink driving offences *	0	0	16	0	105	121
- Dangerous, reckless, or negligent driving	12	1	20	0	125	158
- Driving while licence suspended or cancelled	1	0	19	0	27	47
Other offences	27	12	10	1	1	51
Total	2,806	1,463	3,725	268	427	8,689

*For details of the offences contained in these categories refer to Appendix.

Juvenile offenders
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TABLE 2.22a Police apprehensions: type of action by major offence alleged against persons of Aboriginal appearance

Offence group	Aboriginal						Total
	Formal caution	Transfer to family conference	Transfer to Youth Court	Withdrawn	Unknown	Total	
Offences against the person (excl. sexual offences)							
- Homicide*	0	0	2	0	0	2	
- Serious assault*	0	6	24	0	0	30	
- Other assault*	11	18	88	3	2	122	
- Offences against the person - miscellaneous*	0	0	16	0	1	17	
Sexual offences	0	0	2	1	0	3	
Robbery and extortion							
- Armed robbery*	0	0	12	0	1	13	
- Unarmed robbery and extortion*	2	1	42	1	1	47	
Burglary and break and enter	16	24	133	3	9	185	
Fraud and misappropriation	0	1	1	0	0	2	
Larceny and receiving							
- Receiving/unlawful possession	3	5	28	2	0	38	
- Larceny/illegal use of vehicle (motor and other)	11	13	57	2	3	86	
- Interfere with a motor vehicle	1	3	15	0	0	19	
- Larceny from a motor vehicle	7	1	25	3	0	36	
- Larceny from shops	28	22	61	0	1	112	
- Larceny - miscellaneous*	5	7	42	2	3	59	
Damage property and environmental offences	23	41	71	1	4	140	
Offences against good order							
- Resist/hinder police	9	2	35	0	0	46	
- Unlawful possession and/or use of weapons*	4	3	8	2	0	17	
- Disorderly/offensive behaviour	10	8	22	2	2	44	
- Indecent/offensive language	6	0	16	0	0	22	
- Graffiti and related offences	1	2	8	1	0	12	
- Public order offences - miscellaneous*	16	4	38	2	5	65	
Drug offences	15	4	39	1	1	60	
Driving offences							
- Drink driving offences*	0	0	2	0	10	12	
- Dangerous, reckless, or negligent driving	0	0	1	0	3	4	
- Driving while licence suspended or cancelled	0	0	5	0	2	7	
Other offences	2	2	0	0	0	4	
Total	170	167	793	26	48	1,204	

*For details of the offences contained in these categories refer to Appendix. Aboriginal appearance, derived from police apprehension reports, reflects the opinion of the apprehending police officer.

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TABLE 2.22b Police apprehensions: type of action by major offence alleged against persons of non-Aboriginal appearance

Offence group	Non-Aboriginal					Total
	Formal caution	Transfer to family conference	Transfer to Youth Court	Withdrawn	Unknown	
Offences against the person (excl. sexual offences)						
- Homicide *	0	0	5	0	0	5
- Serious assault *	17	25	61	3	1	107
- Other assault *	151	105	214	27	10	507
- Offences against the person - miscellaneous *	4	3	31	1	1	40
Sexual offences	12	22	31	16	1	82
Robbery and extortion						
- Armed robbery *	3	1	28	2	0	34
- Unarmed robbery and extortion *	6	8	69	5	2	90
Burglary and break and enter	103	184	285	22	14	608
Fraud and misappropriation	30	17	34	5	2	88
Larceny and receiving						
- Receiving/unlawful possession	69	36	103	6	0	214
- Larceny/illegal use of vehicle (motor and other)	71	83	219	16	3	392
- interfere with a motor vehicle	18	9	40	2	1	70
- Larceny from motor vehicle	39	33	96	6	4	178
- Larceny from shops	270	130	230	12	10	652
- Larceny - miscellaneous *	135	82	153	11	14	395
Damage property and environmental offences	205	121	202	17	10	555
Offences against good order						
- Resist/hinder police	55	11	64	4	7	141
- Unlawful possession and/or use of weapons *	49	17	48	6	1	121
- Disorderly/offensive behaviour	85	11	64	2	2	164
- Indecent/offensive language	39	8	17	2	0	66
- Graffiti and related offences	54	25	45	3	1	128
- Public order offences - miscellaneous *	211	55	100	13	8	387
Drug offences	399	115	254	21	9	798
Driving offences						
- Drink driving offences *	0	0	10	0	73	83
- Dangerous, reckless, or negligent driving	9	1	15	0	70	95
- Driving while licence suspended or cancelled	1	0	10	0	12	23
Other offences	15	6	6	1	1	29
Total	2,050	1,108	2,434	203	257	6,052

*For details of the offences contained in these categories refer to Appendix.

Non-Aboriginal appearance, derived from police apprehension reports, reflects the opinion of the apprehending police officer.

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TABLE 2.22c Police apprehensions: type of action by major offence alleged against persons for whom racial appearance was not recorded

Offence group	Formal caution			Transfer to family conference			Transfer to Youth Court			Racial appearance not recorded			Total
	Formal caution	Transfer to family conference	Transfer to Youth Court	Transfer to family conference	Transfer to Youth Court	Transfer to Youth Court	Withdrawn	Unknown	Total				
Offences against the person (excl. sexual offences)													
- Homicide*	0	0	0	0	0	0	0	0	0	0	0	0	0
- Serious assault*	1	4	5	0	0	0	0	0	0	0	0	0	0
- Other assault*	37	13	52	1	1	5	1	5	108	108	108	108	108
- Offences against the person - miscellaneous*	3	2	8	0	0	0	0	0	13	13	13	13	13
Sexual offences	1	1	7	1	3	2	3	2	14	14	14	14	14
Robbery and extortion													
- Armed robbery*	0	0	4	0	0	0	0	0	4	4	4	4	4
- Unarmed robbery and extortion*	1	1	10	0	0	0	0	0	12	12	12	12	12
Burglary and break and enter	57	37	54	1	7	7	1	7	156	156	156	156	156
Fraud and misappropriation	5	1	4	1	1	0	1	0	11	11	11	11	11
Larceny and receiving													
- Receiving/unlawful possession	12	1	19	1	5	0	5	0	37	37	37	37	37
- Larceny/illegal use of vehicle (motor and other)	11	7	31	1	1	1	1	1	51	51	51	51	51
- Interfere with a motor vehicle	3	0	3	0	0	0	0	0	8	8	8	8	8
- Larceny from motor vehicle	10	3	14	0	0	0	0	0	28	28	28	28	28
- Larceny from shops	52	16	41	5	5	3	5	3	117	117	117	117	117
- Larceny - miscellaneous*	36	16	37	2	2	2	2	2	93	93	93	93	93
Damage property and environmental offences	81	29	62	4	4	3	4	3	179	179	179	179	179
Offences against good order													
- Resist/hinder police	17	2	14	1	1	2	1	2	36	36	36	36	36
- Unlawful possession and/or use of weapons*	17	1	9	2	2	0	2	0	29	29	29	29	29
- Disorderly/offensive behaviour	27	9	20	0	0	0	0	0	56	56	56	56	56
- Indecent/offensive language	8	2	7	0	0	0	0	0	17	17	17	17	17
- Graffiti and related offences	13	1	4	1	1	0	1	0	19	19	19	19	19
- Public order offences - miscellaneous*	71	19	30	5	5	2	5	2	127	127	127	127	127
Drug offences	110	19	47	6	6	5	6	5	187	187	187	187	187
Driving offences													
- Drink driving offences*	0	0	4	0	0	0	0	0	22	22	22	22	22
- Dangerous, reckless, or negligent driving	3	0	4	0	0	0	0	0	59	59	59	59	59
- Driving while licence suspended or cancelled	0	0	4	0	0	0	0	0	17	17	17	17	17
Other offences	10	4	4	4	4	0	0	0	18	18	18	18	18
Total	586	188	498	39	122	1,433	39	122	1,433	1,433	1,433	1,433	1,433

*For details of the offences contained in these categories refer to Appendix. Racial appearance, derived from police apprehension reports, reflects the opinion of the apprehending police officer.

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TABLE 2.23 Police apprehensions: sex and type of action by method of apprehension

Method of Apprehension	Males						Total	No.	%
	Formal caution	Transfer to family conference	Transfer to Youth Court	Withdrawn	Unknown				
Arrest	205	274	1,485	38	51		2,053	29.5	
Report	1,981	869	1,589	171	308		4,918	70.5	
Total	2,186	1,143	3,074	209	359		6,971	100.0	

Method of Apprehension	Females						Total	No.	%
	Formal caution	Transfer to family conference	Transfer to Youth Court	Withdrawn	Unknown				
Arrest	69	67	295	10	10		451	26.3	
Report	551	253	356	49	58		1,267	73.7	
Total	620	320	651	59	68		1,718	100.0	

Method of Apprehension	Total						Total	No.	%
	Formal caution	Transfer to family conference	Transfer to Youth Court	Withdrawn	Unknown				
Arrest	274	341	1,780	48	61		2,504	28.8	
Report	2,532	1,122	1,945	220	366		6,185	71.2	
Total	2,806	1,463	3,725	268	427		8,689	100.0	

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TABLE 2.24 Number of police apprehensions per person by sex

Number of apprehensions	Males		Females		Total	
	No.	%	No.	%	No.	%
1	2,719	68.3	845	75.1	3,564	69.8
2	624	15.7	160	14.2	784	15.3
3	274	6.9	56	5.0	330	6.5
4	121	3.0	22	2.0	143	2.8
5-9	217	5.4	36	3.2	253	5.0
10-14	28	0.7	4	0.4	32	0.6
15 and over	0	0	2	0.2	2	0.0
Total	3,983	100.0	1,125	100.0	5,108	100.0

This table refers to individual young offenders who have been the subject of at least one apprehension report during 1998. Each person is counted once regardless of the number of times they have been apprehended during the twelve month period.

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TABLE 2.25 Formal police cautions: sex by proportion of cautions involving an apology/compensation/
community work/other condition

Undertaking as part of a caution	Males											
	Apology			Compensation			Community Work			Other Undertaking		
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Yes	472	21.7	319	14.7	202	9.3	833	38.3				
No	1,705	78.3	1,858	85.3	1,975	90.7	1,344	61.7				
Total	2,177	100.0	2,177	100.0	2,177	100.0	2,177	100.0				
	Females											
	Apology			Compensation			Community Work			Other Undertaking		
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Yes	155	25.2	90	14.7	40	6.5	276	45.0				
No	459	74.8	524	85.3	574	93.5	338	55.0				
Total	614	100.0	614	100.0	614	100.0	614	100.0				
	Total											
	Apology			Compensation			Community Work			Other Undertaking		
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Yes	627	22.5	409	14.7	242	8.7	1,109	39.7				
No	2,164	77.5	2,382	85.3	2,549	91.3	1,682	60.3				
Total	2,791	100.0	2,791	100.0	2,791	100.0	2,791	100.0				

Total figures refer to the actual number of cautions administered, rather than the number of referrals to a caution. This counting rule differs from that used in the 1997 report when it was assumed that the number of cautions equalled the number of referrals.

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TABLE 2.26 Formal police cautions: racial appearance by proportion of cautions involving an apology/
compensation/community work/other condition

Undertaking as part of a caution	Aboriginal											
	Apology			Compensation			Community Work			Other Undertaking		
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Yes	29	17.2	12	7.1	12	7.1	12	7.1	44	26.0		
No	140	82.8	157	92.9	157	92.9	157	92.9	125	74.0		
Total	169	100.0	169	100.0	169	100.0	169	100.0	169	100.0		
Undertaking as part of a caution	Non-Aboriginal											
	Apology			Compensation			Community Work			Other Undertaking		
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Yes	467	22.9	304	14.9	144	7.1	144	7.1	862	42.2		
No	1,574	77.1	1,737	85.1	1,897	92.9	1,897	92.9	1,179	57.8		
Total	2,041	100.0	2,041	100.0	2,041	100.0	2,041	100.0	2,041	100.0		
Undertaking as part of a caution	Unknown											
	Apology			Compensation			Community Work			Other Undertaking		
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Yes	131	22.5	93	16.0	86	14.8	86	14.8	203	34.9		
No	450	77.5	488	84.0	495	85.2	495	85.2	378	65.1		
Total	581	100.0	581	100.0	581	100.0	581	100.0	581	100.0		

Racial appearance, derived from police apprehension reports, reflects the opinion of the apprehending police officer. Total figures refer to the actual number of cautions administered, rather than the number of referrals to a caution. This counting rule differs from that used in the 1997 report when it was assumed that the number of cautions equalled the number of referrals.

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TABLE 2.27 Formal police cautions where compensation was agreed to: sex by amount of compensation per caution

Amount	Male	Female	Unknown	Total
\$1-25	85	29	0	114
\$26-50	63	23	0	86
\$51-100	65	21	0	86
\$101-150	31	7	0	38
\$151-200	27	2	0	29
\$201-250	16	3	0	19
\$251-500	25	4	0	29
Over \$500	7	1	0	8
Total	319	90	0	409

See Appendix for an explanation of the counting rules used.

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TABLE 2.28 Formal police cautions where community work was agreed to: sex by number of hours of community work per caution

Number of hours	Male	Female	Unknown	Total
1-10	137	33	0	170
11-20	35	4	0	39
21-30	20	3	0	23
31-40	5	0	0	5
41-50	4	0	0	4
51-75	1	0	0	1
Total	202	40	0	242

See Appendix for an explanation of the counting rules used.

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TABLE 2.29 Formal police cautions where an undertaking was agreed to:
undertaking conditions by major offence admitted

Offence group	Apology	Compensation (\$)			Community Work (hrs)			Other		
		No.	Min	Av	Max	No.	Min		Av	Max
Offences against the person (excl. sexual offences)										
- Homicide *	0	0	-	-	-	0	-	-	0	
- Serious assault *	6	3	17	36	50	2	8	16	24	
- Other assault *	65	8	5	45	116	10	1	12	30	
- Offences against the person - miscellaneous *	0	0	-	-	-	2	10	10	10	
Sexual offences	3	0	-	-	-	0	-	-	6	
Robbery and extortion										
- Armed robbery*	1	0	-	-	-	0	-	-	1	
- Unarmed robbery and extortion*	2	1	1,200	1,200	1,200	0	-	-	6	
Burglary and break and enter	83	54	10	93	436	57	2	14	54	
Fraud and misappropriation	12	9	5	393	2,255	4	3	8	10	
Larceny and receiving										
- Receiving/unlawful possession	14	14	2	87	228	7	5	19	40	
- Larceny/illegal use of vehicle (motor and other)	30	13	10	40	200	9	3	7	10	
- Interfere with a motor vehicle	6	4	20	184	300	0	-	-	6	
- Larceny from a motor vehicle	21	11	5	94	294	5	5	15	30	
- Larceny from shops	113	44	2	37	240	22	2	10	30	
- Larceny - miscellaneous *	59	46	4	67	1,054	13	2	6	10	
Damage property and environmental offences	107	145	6	122	761	44	2	13	50	
Offences against good order										
- Resist/hinder police	11	2	1	151	300	3	2	3	5	
- Unlawful possession and/or use of weapons*	1	1	50	112	180	11	2	9	20	
- Disorderly/offensive behaviour	19	8	0	0	0	1	20	20	19	
- Indecent/offensive language	4	0	0	0	0	10	5	14	25	
- Graffiti and related offences	12	23	30	161	1,006	10	3	8	24	
- Public order offences - miscellaneous *	43	16	10	155	759	15	3	8	24	
Drug offences	10	3	46	102	200	23	1	9	25	
Driving offences										
- Drink driving offences *	0	0	-	-	-	0	-	-	0	
- Dangerous, reckless, or negligent driving	2	2	100	200	300	0	-	-	3	
- Driving while licence suspended or cancelled	1	1	18	18	18	0	-	-	0	
Other offences	2	2	30	65	100	1	2	2	15	
Total	627	409	1	109	2,255	242	1	11	54	1,109

*For details of the offences contained in these categories refer to Appendix.
See Appendix for an explanation of the counting rules used.

3

FAMILY CONFERENCES

Juvenile offenders
1 January - 31 December 1998

TABLE 3.1 Case referrals received by the Family Conference Team: sex by most serious outcome

Outcome	Males		Females		Unknown		Total	
	No.	%	No.	%	No.	%	No.	%
'Successful' conference								
Undertaking	1,161	82.5	322	82.1	9	90.0	1,492	82.5
Formal caution	80	5.7	20	5.1	0	0	100	5.5
No action	9	0.6	3	0.8	0	0	12	0.7
Sub-total	1,250	88.8	345	88.0	9	90.0	1,604	88.7
Conference held, not 'successful'								
Youth disagrees/police disagrees	0	0	0	0	0	0	0	0
Youth elects court	12	0.9	3	0.8	0	0	15	0.8
No admission	8	0.6	0	0	0	0	8	0.4
Sub-total	20	1.4	3	0.8	0	0	23	1.3
Conference held, case not proceeded with	4	0.3	2	0.5	0	0	6	0.3
Conference not held								
Case not proceeded with	18	1.3	3	0.8	0	0	21	1.2
No admission/elects court	15	1.1	2	0.5	1	10.0	18	1.0
Non-appearance of youth	56	4.0	18	4.6	0	0	74	4.1
Unable to locate youth	44	3.1	19	4.8	0	0	63	3.5
Sub-total	133	9.5	42	10.7	1	10.0	176	9.7
Total	1,407	100.0	392	100.0	10	100.0	1,809	100.0

Prior to 1997, *Crime and Justice* reports did not include cases where the conference was held but either there was no admission or the case was not proceeded with. Nor did they report on cases where a conference was not actually held. (See Appendix for more details.) See Appendix for explanations of outcome categories. There were two cases in which the initial outcome had been 'police/youth disagrees' and the young person had subsequently had the matter finalised by a conference run in the Youth Court. In each of these cases only the final court outcome is presented.

Juvenile offenders
1 January - 31 December 1998

TABLE 3.2 Case referrals received by the Family Conference Team: racial identity and sex by most serious outcome

Outcome	Aboriginal		Non-Aboriginal		Unknown		Total
	Male	Female	Male	Female	Male	Female	
'Successful' conference							
Undertaking	131	65	993	244	37	13	1,492
Formal caution	4	5	73	15	3	0	100
No action	3	3	5	0	1	0	12
Sub-total	138	73	1,071	259	41	13	1,604
Conference held, not 'successful'							
Youth disagrees/police disagrees	0	0	0	0	0	0	0
Youth elects court	4	0	6	3	2	0	15
No admission	1	0	7	0	0	0	8
Sub-total	5	0	13	3	2	0	23
Conference held, case not proceeded with							
	1	1	3	1	0	0	6
Conference not held							
Case not proceeded with	3	2	13	1	2	0	21
No admission/elects court	5	2	8	0	2	0	18
Non-appearance of youth	14	8	37	9	5	1	74
Unable to locate youth	8	5	34	14	2	0	63
Sub-total	30	17	92	24	11	1	176
Total	174	91	1,179	287	54	14	1,809

Prior to 1997, *Crimes and Justice* reports did not include cases where the conference was held but either there was no admission or the case was not proceeded with. Nor did they report on cases where a conference was not actually held. (See Appendix for more details.)
See Appendix for explanations of outcome categories. There were two cases in which the initial outcome had been 'police/youth disagrees' and the young person had subsequently had the matter finalised by a conference run in the Youth Court. In each of these cases only the final court outcome is presented.
Racial identity is, in the first instance, derived from police apprehension reports which record the opinion of the apprehending police officer as to the appearance of the apprehended person. If 'race' is missing from the police file sent to them, the Family Conference Team will add this information where possible. They may also amend police entries which they consider to be incorrect.

Juvenile offenders

1 January - 31 December 1998

TABLE 3.3a Case referrals received by the Family Conference Team: most serious outcome by major offence alleged where a conference was held

Offence group	'Successful' conference				'Unsuccessful' conference				Total	
	Undertaking	Formal caution	No action	Youth disagrees	Youth elects court	No admission [#]	Case not proceeded with [*]	No.	%	
Offences against the person (excl. sexual offences)										
- Homicide*	0	0	0	0	0	0	0	0	0	
- Serious assault*	36	1	0	0	0	0	0	37	2.3	
- Other assault*	126	13	4	0	6	2	1	152	9.3	
- Offences against the person - miscellaneous*	6	0	0	0	0	0	0	6	0.4	
Sexual offences	25	0	1	0	0	0	0	26	1.6	
Robbery and extortion										
- Armed robbery*	1	0	0	0	0	0	0	1	0.1	
- Unarmed robbery and extortion*	9	0	0	0	0	0	0	9	0.6	
Burglary and break and enter	260	4	0	0	2	0	1	267	16.4	
Fraud and misappropriation	22	0	0	0	0	0	0	22	1.3	
Larceny and receiving										
- Receiving/unlawful possession	44	4	0	0	1	0	0	49	3.0	
- Larceny/illegal use of vehicle (motor and other)	99	3	0	0	0	1	0	103	6.3	
- Interfere with a motor vehicle	19	0	0	0	0	0	0	19	1.2	
- Larceny from a motor vehicle	31	0	0	0	0	1	0	32	2.0	
- Larceny from shops and larceny - miscellaneous #	307	5	2	0	2	0	0	316	19.4	
Damage property and environmental offences	204	9	1	0	2	2	1	219	13.4	
Offences against good order										
- Hinder/resist police	13	1	0	0	0	0	1	15	0.9	
- Unlawful possession and/or use of weapons*	23	5	0	0	0	0	0	28	1.7	
- Disorderly/offensive behaviour	22	9	1	0	0	1	0	33	2.0	
- Indecent/offensive language	7	3	0	0	0	0	0	10	0.6	
- Graffiti and related offences	30	0	0	0	0	0	0	30	1.8	
- Public order offences - miscellaneous*	72	15	2	0	1	1	2	93	5.7	
Drug offences	110	26	0	0	1	0	0	137	8.4	
Driving offences										
- Drink driving offences*	0	0	0	0	0	0	0	0	0	
- Dangerous, reckless, or negligent driving	0	0	0	0	0	0	0	0	0	
- Driving while licence suspended or cancelled	0	0	0	0	0	0	0	0	0	
- Other driving/traffic offences	14	1	0	0	0	0	0	15	0.9	
Other offences	12	1	1	0	0	0	0	14	0.9	
Total	1,492	100	12	0	15	8	6	1,633	100.0	

*For details of the offences contained in these categories refer to Appendix. #Prior to 1997, Crime and Justice reports did not include these categories (see Appendix).

Combined due to data coding problems (see Appendix)

Juvenile offenders

1 January - 31 December 1998

TABLE 3.3b Case referrals received by the Family Conference Team: most serious outcome by major offence alleged where a conference was not held

Offence group	Case not proceeded with	No admission/ elects court	Non-appearance of youth	Unable to locate youth	Total	%
Offences against the person (excl. sexual offences)						
- Homicide*	0	0	0	0	0	0
- Serious assault *	0	2	1	1	4	2.3
- Other assault *	1	4	8	8	21	11.9
- Offences against the person - miscellaneous *	0	0	0	0	0	0
Sexual offences	1	0	0	0	1	0.6
Robbery and extortion						
- Armed robbery*	0	0	0	0	0	0
- Unarmed robbery and extortion*	1	0	0	1	2	1.1
Burglary and break and enter	5	2	10	4	21	11.9
Fraud and misappropriation	1	0	1	0	2	1.1
Larceny and receiving						
- Receiving/unlawful possession	0	1	1	6	8	4.5
- Larceny/illegal use of vehicle (motor and other)	1	1	5	3	10	5.7
- Interfere with a motor vehicle	0	0	1	1	2	1.1
- Larceny from a motor vehicle	1	0	1	1	3	1.7
- Larceny from shops and larceny - miscellaneous #	3	3	15	13	34	19.3
Damage property and environmental offences	2	2	8	6	18	10.2
Offences against good order						
- Hinder/resist police	0	1	0	3	4	2.3
- Unlawful possession and/or use of weapons*	0	0	2	0	2	1.1
- Disorderly/offensive behaviour	1	0	9	3	13	7.4
- Indecent/offensive language	1	0	0	1	2	1.1
- Graffiti and related offences	0	0	2	2	4	2.3
- Public order offences - miscellaneous *	2	1	1	2	6	3.4
Drug offences	0	0	8	7	15	8.5
Driving offences						
- Drink driving offences *	0	0	0	0	0	0
- Dangerous, reckless, or negligent driving	1	0	0	0	1	0.6
- Driving while licence suspended or cancelled	0	0	0	0	0	0
- Other driving/traffic offences	0	1	1	1	3	1.7
Other offences	0	0	0	0	0	0
Total	21	18	74	63	176	100.0

*For details of the offences contained in these categories refer to Appendix .). # Combined due to data coding problems (see Appendix)

Juvenile offenders

1 January - 31 December 1998

TABLE 3.3c Case referrals received by the Family Conference Team: most serious outcome by major offence alleged for all referrals

Offence group	No.	%
Offences against the person (excl. sexual offences)		
- Homicide*	0	0
- Serious assault *	41	2.3
- Other assault *	173	9.6
- Offences against the person - miscellaneous *	6	0.3
Sexual offences	27	1.5
Robbery and extortion		
- Armed robbery*	1	0.1
- Unarmed robbery and extortion*	11	0.6
Burglary and break and enter	288	15.9
Fraud and misappropriation	24	1.3
Larceny and receiving		
- Receiving/unlawful possession	57	3.2
- Larceny/illegal use of vehicle (motor and other)	113	6.2
- Interfere with a motor vehicle	21	1.2
- Larceny from a motor vehicle	35	1.9
- Larceny from shops and larceny - miscellaneous #	350	19.3
Damage property and environmental offences	237	13.1
Offences against good order		
- Hinder/resist police	19	1.1
- Unlawful possession and/or use of weapons*	30	1.7
- Disorderly/offensive behaviour	46	2.5
- Indecent/offensive language	12	0.7
- Graffiti and related offences	34	1.9
- Public order offences - miscellaneous *	99	5.5
Drug offences	152	8.4
Driving offences		
- Drink driving offences *	0	0
- Dangerous, reckless, or negligent driving	1	0.1
- Driving while licence suspended or cancelled	0	0
- Other driving/traffic offences	18	1.0
Other offences	14	0.8
Total	1,809	100.0

* For details of the offences contained in these categories refer to Appendix). # Combined due to data coding problems (see Appendix)

Juvenile offenders
1 January - 31 December 1998

TABLE 3.4b Cases dealt with at a family conference: age by major offence alleged against females

Offence group	Females										Total
	10	11	12	13	14	15	16	17	Unknown	No.	
Offences against the person (excl. sexual offences)	0	0	0	0	0	0	0	0	0	0	0
- Homicide*	0	0	0	0	0	0	0	0	0	0	0
- Serious assault*	0	0	0	1	3	0	3	1	0	8	2.3
- Other assault*	0	0	3	10	16	9	9	6	2	55	15.7
- Offences against the person - miscellaneous*	0	0	0	0	0	0	0	0	0	0	0
Sexual offences	0	0	0	0	0	0	0	0	0	0	0
Robbery and extortion	0	0	0	0	0	0	0	0	0	0	0
- Armed robbery*	0	0	0	0	0	1	1	0	1	3	0.9
- Unarmed robbery and extortion*	2	1	2	4	13	5	4	2	0	33	9.4
Burglary and break and enter	0	0	0	0	0	1	3	4	0	8	2.3
Fraud and misappropriation	0	0	0	0	0	0	0	0	0	0	0
Larceny and receiving	0	0	0	3	3	5	0	1	0	12	3.4
- Receiving/unlawful possession	0	0	0	0	7	7	3	2	0	19	5.4
- Larceny/illegal use of vehicle (motor and other)	0	0	0	1	0	0	0	0	0	1	0.3
- Interfere with a motor vehicle	0	0	0	0	0	0	0	0	0	0	0
- Larceny from a motor vehicle	0	0	0	0	0	0	0	0	0	0	0
- Larceny from shops and larceny - miscellaneous #	1	3	3	15	32	28	20	11	0	113	32.3
Damage property and environmental offences	0	0	0	2	10	14	2	9	2	39	11.1
Offences against good order	0	0	0	0	0	3	1	0	1	5	1.4
- Hinder/resist police	0	0	0	0	3	1	1	0	0	5	1.4
- Unlawful possession and/or use of weapons*	0	0	0	1	2	2	2	0	0	7	2.0
- Disorderly/offensive behaviour	0	0	0	0	1	0	0	0	0	1	0.3
- Indecent/offensive language	0	0	0	0	1	1	2	0	0	4	1.1
- Graffiti and related offences	0	0	0	4	3	5	3	2	1	18	5.1
- Public order offences - miscellaneous*	0	0	1	2	4	1	5	3	0	16	4.6
Drug offences	0	0	0	0	0	0	0	0	0	0	0
Driving offences	0	0	0	0	0	0	0	0	0	0	0
- Drink driving offences*	0	0	0	0	0	0	0	0	0	0	0
- Dangerous, reckless, or negligent driving	0	0	0	0	0	0	0	0	0	0	0
- Driving while licence suspended or cancelled	0	0	0	0	0	0	0	0	0	0	0
- Other driving/traffic offences	0	0	0	0	0	0	0	0	0	0	0
Other offences	0	0	0	1	0	1	1	0	0	3	0.9
Total	3	4	9	44	98	84	60	41	7	350	100.0

* For details of the offences contained in these categories refer to Appendix. This table does not include cases in the category of 'Conference not held' as detailed in Tables 3.1 - 3.3. See Appendix for more details.
Age is at date of offence. # Combined due to data coding problems (see Appendix)

Juvenile offenders
1 January - 31 December 1998

TABLE 3.4c Cases dealt with at a family conference: age by major offence alleged against all persons

Offence group	Total										No.	Total %	
	10	11	12	13	14	15	16	17	Unknown				
Offences against the person (excl. sexual offences)													
- Homicide*	0	0	0	0	0	0	0	0	0	0	0	0	0
- Serious assault*	0	0	1	2	8	7	9	10	0	0	0	0	0
- Other assault*	1	5	11	19	29	32	31	21	3	3	152	9.3	2.3
- Offences against the person - miscellaneous*	1	0	0	0	0	1	1	3	0	0	6	0.4	0.4
Sexual offences	2	1	4	5	7	2	4	1	0	0	26	1.6	1.6
Robbery and extortion													
- Armed robbery*	0	0	0	0	0	1	0	0	0	0	1	0.1	0.1
- Unarmed robbery and extortion*	0	0	0	0	3	4	1	0	0	1	9	0.6	0.6
Burglary and break and enter	9	7	12	31	63	59	50	32	4	267	16.4	16.4	
Fraud and misappropriation	0	0	0	1	1	5	7	8	0	22	1.3	1.3	
Larceny and receiving													
- Receiving/unlawful possession	0	0	2	6	7	20	7	6	1	49	3.0	3.0	
- Larceny/illegal use of vehicle (motor and other)	3	1	3	11	19	24	24	16	2	103	6.3	6.3	
- Interfere with a motor vehicle	0	0	0	5	2	6	1	5	0	19	1.2	1.2	
- Larceny from a motor vehicle	0	0	2	1	7	8	5	9	0	32	2.0	2.0	
- Larceny from shops and larceny - miscellaneous #	6	7	20	45	69	66	57	43	3	316	19.4	19.4	
Damage property and environmental offences	11	3	14	17	36	44	44	43	7	219	13.4	13.4	
Offences against good order													
- Hinder/resist police	0	0	0	0	2	5	3	3	2	15	0.9	0.9	
- Unlawful possession and/or use of weapons*	0	0	0	0	8	7	8	4	1	28	1.7	1.7	
- Disorderly/offensive behaviour	0	0	4	4	5	11	6	3	0	33	2.0	2.0	
- Indecent/offensive language	0	0	0	0	1	2	3	4	0	10	0.6	0.6	
- Graffiti and related offences	0	0	1	2	3	10	7	6	1	30	1.8	1.8	
- Public order offences - miscellaneous*	1	1	1	11	17	18	19	21	4	93	5.7	5.7	
Drug offences	0	2	2	10	16	24	35	46	2	137	8.4	8.4	
Driving offences													
- Drink driving offences*	0	0	0	0	0	0	0	0	0	0	0	0	0
- Dangerous, reckless, or negligent driving	0	0	0	0	0	0	0	0	0	0	0	0	0
- Driving while licence suspended or cancelled	0	0	0	0	0	0	0	0	0	0	0	0	0
- Other driving/traffic offences	0	0	0	1	3	10	0	0	1	15	0.9	0.9	
Other offences	1	0	0	2	2	2	1	4	2	14	0.9	0.9	
Total	35	27	77	173	308	368	323	288	34	1,633	100.0		

* For details of the offences contained in these categories refer to Appendix. This table does not include cases in the category of 'Conference not held' as detailed in Tables 3.1 - 3.3. See Appendix for more details. Age is at date of offence. Total includes nine cases for which sex was unknown). # Combined due to data coding problems (see Appendix)

Juvenile offenders
1 January - 31 December 1998

TABLE 3.5a Cases dealt with at a family conference: age by major offence alleged against Aboriginal persons

Offence group	Aboriginal										Total	
	10	11	12	13	14	15	16	17	Unknown	No.		%
Offences against the person (excl. sexual offences)												
- Homicide *	0	0	0	0	0	0	0	0	0	0	0	0
- Serious assault *	0	0	0	0	1	0	1	0	0	2	2	0.9
- Other assault *	0	0	3	4	5	4	1	2	0	19	19	8.7
- Offences against the person - miscellaneous *	0	0	0	0	0	0	0	0	0	0	0	0
Sexual offences	0	0	0	0	0	0	0	0	0	0	0	0
Robbery and extortion												
- Armed robbery*	0	0	0	0	0	0	0	0	0	0	0	0
- Unarmed robbery and extortion*	0	0	0	0	0	0	0	0	1	1	1	0.5
Burglary and break and enter	5	2	4	6	11	5	4	2	1	40	40	18.3
Fraud and misappropriation	0	0	0	0	0	0	0	0	0	0	0	0
Larceny and receiving												
- Receiving/unlawful possession	0	0	0	3	0	0	0	0	0	3	3	1.4
- Larceny/illegal use of vehicle (motor and other)	3	0	2	4	2	2	0	1	0	14	14	6.4
- Interfere with a motor vehicle	0	0	0	0	1	1	0	1	0	3	3	1.4
- Larceny from a motor vehicle	0	0	1	0	1	0	0	0	0	2	2	0.9
- Larceny from shops and larceny - miscellaneous #	1	2	5	13	6	6	3	7	0	43	43	19.6
Damage property and environmental offences	3	1	6	6	9	9	4	4	2	44	44	20.1
Offences against good order												
- Hinder/resist police	0	0	0	0	0	3	2	0	0	5	5	2.3
- Unlawful possession and/or use of weapons*	0	0	0	0	3	1	3	1	1	9	9	4.1
- Disorderly/offensive behaviour	0	0	3	1	2	1	2	0	0	9	9	4.1
- Indecent/offensive language	0	0	0	0	0	0	1	0	0	1	1	0.5
- Graffiti and related offences	0	0	0	0	0	1	0	0	0	1	1	0.5
- Public order offences - miscellaneous *	1	1	1	3	3	0	0	3	0	12	12	5.5
Drug offences	0	1	0	1	0	2	2	2	0	8	8	3.7
Driving offences												
- Drink driving offences *	0	0	0	0	0	0	0	0	0	0	0	0
- Dangerous, reckless, or negligent driving	0	0	0	0	0	0	0	0	0	0	0	0
- Driving while licence suspended or cancelled	0	0	0	0	0	0	0	0	0	0	0	0
- Other driving/traffic offences	0	0	0	0	0	0	0	0	0	0	0	0
Other offences	1	0	0	0	1	1	0	0	0	3	3	1.4
Total	14	7	25	41	45	36	23	23	5	219	219	100.0

* For details of the offences contained in these categories refer to Appendix. Age is at date of offence. This table does not include cases in the category of 'Conference not held' as detailed in Tables 3.1 - 3.3. Racial identity is, in the first instance, derived from police apprehension reports which record the opinion of the apprehending police officer as to the appearance of the apprehended person. If 'race' is missing from the police file sent to them, the Family Conference Team will add this information where possible. They may also amend police entries which they consider to be incorrect.)

Combined due to data coding problems (see Appendix)

Juvenile offenders
1 January - 31 December 1998

TABLE 3.5c Cases dealt with at a family conference: age by major offence alleged against persons for whom racial identity was not recorded

Offence group	Racial identity not recorded										Total	%
	10	11	12	13	14	15	16	17	Unknown	No.		
Offences against the person (excl. sexual offences)												
- Homicide *	0	0	0	0	0	0	0	0	0	0	0	0
- Serious assault *	0	0	0	0	0	0	1	1	0	2	2	3.1
- Other assault *	0	0	0	1	0	2	3	2	0	8	8	12.5
- Offences against the person - miscellaneous *	0	0	0	0	0	0	0	0	0	0	0	0
Sexual offences	0	0	0	0	0	0	0	0	0	0	0	0
Robbery and extortion												
- Armed robbery *	0	0	0	0	0	0	0	0	0	0	0	0
- Unarmed robbery and extortion *	0	0	0	0	0	0	0	0	0	0	0	0
Burglary and break and enter	0	0	0	1	0	2	1	1	1	6	6	9.4
Fraud and misappropriation	0	0	0	0	0	0	0	0	0	0	0	0
Larceny and receiving												
- Receiving/unlawful possession	0	0	1	0	1	1	0	1	0	4	4	6.3
- Larceny/illegal use of vehicle (motor and other)	0	0	0	0	0	0	3	1	0	4	4	6.3
- Interfere with a motor vehicle	0	0	0	0	0	0	0	0	0	0	0	0
- Larceny from a motor vehicle	0	0	0	0	0	0	0	2	0	2	2	3.1
- Larceny from shops and larceny - miscellaneous #	0	0	1	0	3	5	2	3	1	15	15	23.4
Damage property and environmental offences	1	0	0	0	2	2	3	3	0	11	11	17.2
Offences against good order												
- Hinder/resist police	0	0	0	0	0	0	0	0	0	0	0	0
- Unlawful possession and/or use of weapons*	0	0	0	0	0	0	0	0	0	0	0	0
- Disorderly/offensive behaviour	0	0	0	1	0	0	1	0	0	2	2	3.1
- Indecent/offensive language	0	0	0	0	0	0	0	0	0	0	0	0
- Graffiti and related offences	0	0	0	0	0	0	0	0	0	0	0	0
- Public order offences - miscellaneous *	0	0	0	0	2	2	3	2	0	7	7	10.9
Drug offences	0	0	0	0	1	1	1	0	0	3	3	4.7
Driving offences												
- Drink driving offences *	0	0	0	0	0	0	0	0	0	0	0	0
- Dangerous, reckless, or negligent driving	0	0	0	0	0	0	0	0	0	0	0	0
- Driving while licence suspended or cancelled	0	0	0	0	0	0	0	0	0	0	0	0
- Other driving/traffic offences	0	0	0	0	0	0	0	0	0	0	0	0
Other offences	0	0	0	0	0	0	0	0	0	0	0	0
Total	1	2	7	3	7	15	18	16	2	64	64	100.0

* For details of the offences contained in these categories refer to Appendix. This table does not include cases in the category of 'Conference not held' as detailed in Tables 3.1 - 3.3. See appendix for more details. See definition of racial identity inserted under Table 3.5a. Age is at date of offence. # Combined due to data coding problems (see Appendix)

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TABLE 3.6 Cases dealt with at a family conference: sex and age by racial identity

Racial identity	Males										Total
	10	11	12	13	14	15	16	17	Unknown	Total	
Aboriginal	14	5	22	23	29	12	15	20	4	144	
Non-Aboriginal	17	18	44	103	175	262	232	215	21	1,087	
Unknown	1	0	2	3	5	9	14	9	0	43	
Total	32	23	68	129	209	283	261	244	25	1,274	
Racial identity	Females										Total
	10	11	12	13	14	15	16	17	Unknown	Total	
Aboriginal	0	2	3	18	16	23	8	3	1	74	
Non-Aboriginal	3	2	6	26	81	55	50	34	6	263	
Unknown	0	0	0	0	1	6	2	4	0	13	
Total	3	4	9	44	98	84	60	41	7	350	
Total											
Aboriginal	14	7	25	41	45	36	23	23	5	219	
Non-Aboriginal	20	20	50	129	256	317	282	249	27	1,350	
Unknown	1	0	2	3	7	15	18	16	2	64	
Total	35	27	77	173	308	368	323	288	34	1,633	

This table does not include cases in the category of 'Conference not held' as detailed in Tables 3.1 - 3.3. See Appendix for more details. Total includes nine cases for which sex was unknown. Age is at date of offence. See definition of racial identity inserted under Table 3.5a.

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TABLE 3.7 Cases dealt with at a family conference: sex by number of offences alleged

Number of offences	Sex			Total No.	%
	Male	Female	Unknown		
One	710	215	6	931	57.0
Two	299	81	0	380	23.3
Three	147	21	3	171	10.5
Four	55	14	0	69	4.2
Five	24	5	0	29	1.8
6 to 10	38	14	0	52	3.2
11 to 15	1	0	0	1	0.1
Total	1,274	350	9	1,633	100.0

This table does not include cases in the category of 'Conference not held' as detailed in Tables 3.1 - 3.3. See Appendix for more details..

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TABLE 3.8 Cases dealt with at a family conference: racial identity by number of offences alleged

Number of offences	Aboriginal		Non-Aboriginal		Unknown	
	No.	%	No.	%	No.	%
One	142	64.8	746	55.3	43	67.2
Two	43	19.6	323	23.9	14	21.9
Three	13	5.9	152	11.3	6	9.4
Four	15	6.8	54	4.0	0	0
Five	3	1.4	26	1.9	0	0
6 to 10	3	1.4	48	3.6	1	1.6
11 to 15	0	0	1	0.1	0	0
Total	219	100.0	1,350	100.0	64	100.0

This table does not include cases in the category of 'Conference not held' as detailed in Tables 3.1 - 3.3. See Appendix for more details.
Racial identity is, in the first instance, derived from police apprehension reports which record the opinion of the apprehending police officer as to the appearance of the apprehended person. If "race" is missing from the police file sent to them, the Family Conference Team will add this information where possible. They may also amend police entries which they consider to be incorrect.

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TABLE 3.9 Cases dealt with a family conference where an undertaking was agreed to: sex by proportion involving an apology/compensation/community work/other condition

Undertaking condition	Apology				Compensation				Community Work				Other				
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	
Yes	748	64.4	328	28.3	432	37.2	805	69.3									
No	413	35.6	833	71.7	729	62.8	356	30.7									
Total	1,161	100.0	1,161	100.0	1,161	100.0	1,161	100.0									
Female																	
Yes	204	63.4	58	18.0	98	30.4	247	76.7									
No	118	36.6	264	82.0	224	69.6	75	23.3									
Total	322	100.0	322	100.0	322	100.0	322	100.0									
Total																	
Yes	958	64.2	388	26.0	532	35.7	1,058	70.9									
No	534	35.8	1,104	74.0	960	64.3	434	29.1									
Total	1,492	100.0	1,492	100.0	1,492	100.0	1,492	100.0									

See Appendix for an explanation of the counting rules used.
Total includes nine cases for which sex was unknown.

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TABLE 3.10 Cases dealt with a family conference where an undertaking was agreed to: racial identity by proportion involving an apology/compensation/community work/other condition

Undertaking condition	Aboriginal				Non-Aboriginal				Unknown			
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Yes	115	58.4	39	19.8	56	28.4	149	75.6	30	51.7	18	31.0
No	82	41.6	158	80.2	141	71.6	48	24.4	28	48.3	40	69.0
Total	197	100.0	197	100.0	197	100.0	197	100.0	58	100.0	58	100.0
Yes	813	65.7	331	26.8	464	37.5	876	70.8	30	51.7	18	31.0
No	424	34.3	906	73.2	773	62.5	361	29.2	28	48.3	40	69.0
Total	1,237	100.0	1,237	100.0	1,237	100.0	1,237	100.0	58	100.0	58	100.0
Yes	30	51.7	18	31.0	12	20.7	33	56.9	30	51.7	18	31.0
No	28	48.3	40	69.0	46	79.3	23	43.1	28	48.3	40	69.0
Total	58	100.0	58	100.0	58	100.0	58	100.0	58	100.0	58	100.0

See Appendix for an explanation of the counting rules used.

Racial identity is, in the first instance, derived from police apprehension reports which record the opinion of the apprehending police officer as to the appearance of the apprehended person. If "race" is missing from the police file sent to them, the Family Conference Team will add this information where possible. They may also amend police entries which they consider to be incorrect.

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TABLE 3.11 Cases dealt with at a family conference where compensation was agreed to:
sex by amount of compensation per case

Amount	Female	Male	Unknown	No.	Total	%
\$1 - 25	12	61	0	73		18.8
\$26 - 50	13	47	1	61		15.7
\$51 - 100	12	74	0	86		22.2
\$101 - 150	4	36	0	40		10.3
\$151 - 200	7	20	0	27		7.0
\$201 - 400	6	44	1	51		13.1
\$401 - 600	3	25	0	28		7.2
\$601 - 800	0	6	0	6		1.5
\$801 - 1,000	1	5	0	6		1.5
\$1,001 - 1,500	0	5	0	5		1.3
\$1,501 - \$2,000	0	1	0	1		0.3
\$2,001 - \$2,500	0	4	0	4		1.0
Total	58	328	2	388		100.0

See Appendix for an explanation of the counting rules used.

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TABLE 3.12 Cases dealt with at a family conference where community work was agreed to:
sex by amount of community work per case

Number of hours	Sex			Total No.	%
	Female	Male	Unknown		
1 - 10	25	106	0	131	24.6
11 - 20	28	107	1	136	25.6
21 - 30	15	51	0	66	12.4
31 - 50	22	103	1	126	23.7
51 - 100	8	59	0	67	12.6
101 - 200	0	5	0	5	0.9
over 200	0	1	0	1	0.2
Total	98	432	2	532	100.0

See Appendix for an explanation of the counting rules used.

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TABLE 3.13 Cases dealt with at a family conference where an undertaking was agreed to:
undertaking conditions by major offence admitted

Offence group	Apology			Compensation (\$)			Community Work (hrs)			Other	
	No.	Min	Av	Min	Av	Max	No.	Min	Av		Max
Offences against the person (excl. sexual offences)	0	-	-	-	-	-	0	-	-	-	0
- Homicide *	32	9	16	146	500	500	13	8	40	100	27
- Serious assault *	73	10	20	111	442	442	26	6	27	100	110
- Other assault *	3	1	213	213	213	213	0	0	0	0	6
- Offences against the person - miscellaneous *	6	0	-	-	-	-	13	8	69	240	25
Sexual offences	1	0	0	0	0	0	0	-	-	-	0
Robbery and extortion	9	0	0	0	0	0	7	10	28	50	8
- Armed robbery *	202	102	4	118	600	600	148	2	35	100	162
- Unarmed robbery and extortion *	17	15	15	395	1,000	1,000	8	8	52	100	15
Burglary and break and enter	27	14	20	121	241	241	11	4	30	85	30
Fraud and misappropriation	77	34	11	360	2,000	2,000	45	2	37	200	54
Larceny and receiving	14	8	25	191	1,000	1,000	3	5	11	20	12
- Receiving/unlawful possession	16	12	90	285	550	550	13	8	31	60	21
- Larceny/illegal use of vehicle (motor and other)	237	80	1	111	750	750	79	2	22	100	233
- Interfere with a motor vehicle	135	83	8	231	2,080	2,080	100	4	30	150	111
- Larceny from a motor vehicle	6	0	-	-	-	-	3	8	13	24	10
- Larceny from shops and larceny - miscellaneous #	4	0	-	-	-	-	2	2	26	50	23
Damage property, arson, environmental	14	0	-	-	-	-	2	12	26	40	13
Offences against good order	2	0	-	-	-	-	0	-	-	-	6
- Hinder/resist police	23	3	20	68	120	120	12	7	24	75	12
- Unlawful possession and/or use of weapons *	34	3	41	197	450	450	22	2	23	80	60
- Disorderly/offensive behaviour	18	1	150	150	150	150	17	3	18	50	100
- Indecent/offensive language	0	0	-	-	-	-	0	-	-	-	0
- Graffiti and related offences	0	0	-	-	-	-	0	-	-	-	0
- Public order offences - miscellaneous *	0	0	-	-	-	-	0	-	-	-	0
Drug offences	0	0	-	-	-	-	0	-	-	-	0
Driving offences	0	0	-	-	-	-	0	-	-	-	0
- Drink driving offences *	0	0	-	-	-	-	0	-	-	-	0
- Dangerous, reckless, or negligent driving	0	0	-	-	-	-	0	-	-	-	0
- Driving while licence suspended or cancelled	0	0	-	-	-	-	0	-	-	-	0
- Other driving/traffic offences	8	3	2,499	2,499	2,499	2,499	6	10	93	150	7
Other offences	958	388	1	197	2,499	2,499	532	2	32	240	1,058

* For details of the offences contained in these categories refer to Appendix. See Appendix for an explanation of the counting rules used.

The offences listed in this table represent the major offence admitted for a particular case cross-tabulated with the conditions imposed for that whole case.

Combined due to data coding problems (see Appendix)

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TABLE 3.14 Cases dealt with at a family conference where an undertaking was agreed to: sex by undertaking compliance status

Undertaking compliance status	Male		Female		Unknown		Total	
	No.	%	No.	%	No.	%	No.	%
Cases with only 1 undertaking								
Completed	814	83.1	208	77.6	5	62.5	1,027	81.8
Waived	33	3.4	2	0.7	0	0	35	2.8
Referred back to police	130	13.3	58	21.6	3	37.5	191	15.2
Cases with more than 1 undertaking								
All complied with	3	0.3	0	0	0	0	3	0.2
All waived	0	0	0	0	0	0	0	0
All referred back to police	0	0	0	0	0	0	0	0
Combination of compliance status	0	0	0	0	0	0	0	0
Total	980	100.0	268	100.0	8	100.0	1,256	100.0

At the time of preparation of this table, there were 236 cases for which undertaking compliance data were not available. See Appendix for more details.

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TABLE 3.15 Cases dealt with at a family conference where an undertaking was agreed to: racial identity by undertaking compliance status

Undertaking compliance status	Aboriginal		Non-Aboriginal		Unknown		Total	
	No.	%	No.	%	No.	%	No.	%
Cases with only 1 undertaking								
Completed	120	70.2	874	84.5	33	64.7	1,027	81.8
Waived	7	4.1	27	2.6	1	2.0	35	2.8
Referred back to police	44	25.7	130	12.6	17	33.3	191	15.2
Cases with more than 1 undertaking								
All complied with	0	0	3	0.3	0	0	3	0.2
All waived	0	0	0	0	0	0	0	0
All referred back to police	0	0	0	0	0	0	0	0
Combination of compliance status	0	0	0	0	0	0	0	0
Total	171	100.0	1,034	100.0	51	100.0	1,256	100

At the time of preparation of this table, there were 236 cases for which undertaking compliance data were not available. See Appendix for more details.
See definition of racial identity inserted under Table 3.5a

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TABLE 3.16 Cases dealt with at a family conference where an undertaking was agreed to:
sex by condition compliance status

Condition compliance status	Male		
	Apology	Compensation	Other
Complied by due date	617	216	852
Complied after due date	68	17	55
Not complied with	18	36	93
Total	703	269	1,000

	Female		
	Apology	Compensation	Other
Complied by due date	168	35	237
Complied after due date	19	2	11
Not complied with	9	12	44
Total	196	49	292

	Total		
	Apology	Compensation	Other
Complied by due date	790	252	1,096
Complied after due date	87	19	66
Not complied with	27	49	138
Total	904	320	1,300

The counting rule used in this table is different from that used in the earlier set of tables on conditions (Tables 3.9 -3.13). See Appendix for more details.
The total includes seventeen conditions for which the sex of the young person was unknown.

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TABLE 3.17 Cases dealt with at a family conference where an undertaking was agreed to:
racial identity by condition compliance status

Condition compliance status	Aboriginal		
	Apology	Compensation	Other
Complied by due date	94	22	146
Complied after due date	17	1	4
Not complied with	5	7	40
Total	116	30	190

	Non-Aboriginal		
	Apology	Compensation	Other
Complied by due date	671	222	918
Complied after due date	69	17	60
Not complied with	21	37	92
Total	761	276	1,070

	Unknown		
	Apology	Compensation	Other
Complied by due date	25	8	32
Complied after due date	1	1	2
Not complied with	1	5	6
Total	27	14	40

The counting rule used in this table is different from that used in the earlier set of tables on conditions (Tables 3.9-3.13). (See Appendix for more details.)

Racial identity is, in the first instance, derived from police apprehension reports which record the opinion of the apprehending police officer as to the appearance of the apprehended person. If "race" is missing from the police file sent to them, the Family Conference Team will add this information where possible. They may also amend police entries which they consider to be incorrect.

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TABLE 3.18 Family conferences: number of conferences held per month

Month	Number
January	89
February	120
March	123
April	112
May	134
June	111
July	133
August	127
September	90
October	126
November	123
December	109
Total	1,397

This table refers to the actual number of conferences held, irrespective of the number of youths dealt with at the one conference.

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TABLE 3.19 Family conferences: number of participants per conference

Number	Offenders	Parents	Victims	Victim Supporters	Youth Supporters	No.	Total	%
0	0	184	720	1,070	936	0	0	0
1	1,242	830	577	245	316	42	42	3.0
2	108	299	75	65	106	328	328	23.5
3	28	36	14	13	28	410	410	29.3
4	9	31	6	2	9	285	285	20.4
5-9	10	17	5	2	2	299	299	21.4
10 and over	0	0	0	0	0	33	33	2.4
Total	1,397	1,397	1,397	1,397	1,397	1,397	1,397	100.0

This table refers to the actual number of conferences held. Youth Justice Coordinators and police representatives are not classified here as participants.

参 考 資 料 #3-1

New Zealand における Family Group Conference の
具体的事例—初犯

(from M. Levine, A. Eagle, S. Tuiavi'i, C. Roseveare,
Creative Youth Justice Practice,
Social Policy Agency and Children, Young Persons
and Their Families Service)

CASE STUDIES

The following ten cases were offered by youth justice professionals as examples of FGC plans for serious and/or repeat offenders which might well have been expected to include custodial sanctions, but which managed instead to keep the young people within their own whānau and community. While some of the plans contain unusual and interesting elements, their true creativity lies in their particular appropriateness to the nature of the offending and the individual circumstances and needs of the victim, young people and their families.

Each plan holds the young person accountable for his offending and addresses the needs of the victim. Half of the plans had quite a large input from the victims. All the plans incorporated clear responsibilities for monitoring their outcomes, variously depending on family members, social workers, caregivers, CYPFS social workers and Community Corrections. Three of the cases drew on Iwi social services.

The plans all involve the young person's family in a very substantial way, sometimes demonstrating an extraordinary commitment on the part of family members. This is especially impressive given that over half the cases reveal outstanding care and protection issues of one kind or another (with all the complex family dynamics to be expected in such situations), including three young people who had substantial histories of care and protection intervention.

Each plan also incorporates developmental elements, ranging very widely across the cases, from employment opportunities and recreation, to life-skills training and counselling. Some of the FGCs met on marae, bringing in hapū and iwi members, and furnishing the young person with valuable cultural direction. In four cases the FGC plan addressed the young person's problems with substance abuse. In general, the developmental elements of the plans were aimed at providing the particular combination of positive alternative activities and practical support need by that young person to avoid future offending. In eight of the ten cases the professionals involved were able to report that the young person had, in fact, stopped re-offending.

The cases are presented as examples of how, even in extremely serious cases, empowering the family, young person and victim enables them to find the elements of a plan that can really work for them. What is required is thorough FGC preparation, effective interagency co-operation, and good community networking so that, when needed, the community resources are available.

“James”

“James” was detained in custody by the Police in a Department of Corrections institution at the age of 17 for a number of offences to be heard in the District Court. At the same time, the Police uncovered other offences that he had committed before turning 17. It was necessary, therefore, to hold a Family Group Conference (FGC) regarding these earlier offences (two charges of theft, four charges of burglary and driving while disqualified).

At the FGC, his family identified that detention was not appropriate for him. They expressed their concern that the system (educational and social) had let him down, as had the whānau. They acknowledged that they had failed the offender in that they had not rallied around and supported him since his mother’s recent death, and their actions had actually dislocated him from his place within the whānau to the point that he now led a nomadic lifestyle and committed offences purely for the purpose of survival.

The young person’s father lived in an urban centre at some distance, and his mother died when he was 16. His stepfather took him in, but that didn’t work out. Then he moved in with another family member, but he did not seem to be accepted into the family as such, just allowed to live in their house.

The whānau acknowledged that his case would be dealt with by the District Court, however they wished to prepare a plan to be considered by Community Corrections in any sentencing options that they might be exploring. The plan included ways of holding the young person accountable for his actions (written apologies to the victims, a period of driving disqualification, and community service at a rugby league club) as well as ways of promoting his future development (a life skills programme, alternative employment opportunities, and return of the young person to the care of his whānau).

The plan is currently in force. The life skills programme was completed and “James” has moved on to a course of vocational training. He now plays for the club where he did his community service. He continues to reside and make progress within the whānau, as recommended by the FGC. The monitoring is carried out by Community Corrections. There has been no re-offending to date.

The whānau’s creativity lay in the fact that they explored options and developed a plan that could be implemented in the District Court as a “community-based sentence”. What sold the plan to the District Court Judge was the whānau’s determination to assume a very active role in responding to the young person’s needs. Both Community Corrections and the District Court accepted this plan and implemented the same within the context of a District Court Supervision Order. There is little doubt that had the whānau not responded in this manner, the offender would have received at least Corrective Training.

“John”

“John” was charged with a burglary which occurred in a provincial town. The victim was an elderly person, frail and living alone, who had been deeply traumatised by the event. A Family Group Conference (FGC) was convened following direction by the court. It was attended by the young person’s parents and eight other members of his extended family.

It was not possible for the elderly victim to attend the FGC, which was being held some distance away. Therefore, in order for the conference to reach appropriate resolutions and restore the dignity of the victim, the young person’s parents paid a personal visit to the victim’s home. (“John” had already been placed in a different part of the country in full-time employment, and working a great deal of overtime.) The visit was very successful in that it resulted in warm and kindly relations between the two families and further visits followed. The parents apologised to the victim, who in turn made it clear that no reparations were being sought. In fact, the victim wrote a letter to the Court expressing appreciation for the visit and asking that no further action be taken against “John”.

The Youth Justice Coordinator encouraged the parents to involve the extended family by emphasising the fact that the vulnerability of such an elderly victim created a potential for more serious charges. The YJC suggested that the extended family’s help in dealing with the young person might be critical to prevent re-offending, and thus the mana of the family would be more seriously damaged if this help was not sought from the wider whānau.

The FGC plan stipulated that the young person would make a cash reparation, and provide a card with his apologies and a gift for the victim, all of which would be personally delivered by one of his family members. The parents acknowledged that they were having a “rough patch” in controlling their son’s behaviour, and enlisted the support of extended whānau. “John” was to live with a close relative who lived in an urban centre where he would be surrounded and supported by immediate and extended whānau.

The plan built on the fact that the young person had obtained full-time employment, and provided for a regular programme of savings managed by his mother; involvement in sporting activities, which includes playing for a whānau team; and help from an immediate family member towards passing the written examination for a driver’s licence. Monitoring was to be the responsibility of the family. The plan was completed.

This particular case stands out for:

- the lengths to which the family went to include the views of the victim;
- the exceptional reconciliation between the victim and young person’s family;
- the support of the victim for the young person;
- the detail of the FGC plan
 - both in terms of the young person’s accountability for the offence; and
 - in providing for the young person’s development;
- and for the fact that there has been no further offending.

“Paul”

“Paul” had an offending history which included theft from a motor vehicle, attempted theft, wilful damage, theft, unlawful taking of a motor vehicle and burglary, and several resultant FGCs. His parents were separated. He lived with his mother, who was alienated from her whānau while residing in the role of her husband. She was afraid to involve her husband’s whānau. Her husband was a heavy drinker. Previous attempts to involve whānau were not successful.

The young person’s offending escalated to assault with a weapon, possession of an offensive weapon, and unlawful taking of a motor vehicle. These were arrest matters which were denied and went to a defended hearing. The Court found in favour of the prosecution, directing that an FGC be convened and a copy of the plan sent to the Judge. For the purpose of this FGC the Iwi was introduced when it was certain that the mana of the father had been adequately dealt with and the responsibility could be extended outwards.

The FGC was held on a marae and ten whānau members participated. The whānau acknowledged that the charges were very serious and that if dealt with in the District Court would very likely lead to incarceration. The whānau decided to meet on two further occasions to develop a plan for the young person and 15 whānau members participated in this work. The whānau stipulated in advance that they accepted responsibility for rehabilitating him and shared the shame that his actions had brought on them all. They decided that the mother would pay reparations to the victims. They asked that the Court accept the family’s plan and make an order placing the young person under the supervision of a proposed Iwi Social Service.

The full plan was very detailed with responsibilities assigned to the young person, specific members of his whānau, the Iwi Social Service, the Iwi trust board, and CYPFS. “Paul” was to follow the rules of his kaumatua/kuia and whānau support; live in the home of a designated member of his whānau during the period of his Supervision Order, following their home rules; participate in the whānau programme arranged; and participate in certain other programmes and sporting activities. The schedule laid out for “Paul” demanded considerable discipline on his part, with strict accounting for his time. His programme was meant to address his accountability for his actions as much as his future development.

The members of his whānau were required to keep in contact with “Paul” by phone and home visits, and support the whānau plan, providing specific support to his caregivers. The whānau was also required to convene a hui on the completion of the Supervision Order to review progress with “Paul”, discuss how to rebuild his relationship with his parents, and provide an effectiveness report to the Court. The young person’s caregivers were accountable for his supervision and day-to-day living arrangements, for encouraging contact between “Paul” and his parents, and reporting regularly to the rest of the whānau on his progress.

The Iwi Social Service involved in the plan was to arrange supervision and counselling sessions; a report to the court at the end of the supervision period; monthly progress reports and accounts to be sent to CYPFS; liaison with the trust board regarding oversight, supervision and support for the whānau; monthly whānau meetings and disbursement of funds to the programme. The trust board members were to act as liaison between all the participants in the plan and to oversee field excursions contained in the plan. CYPFS staff were responsible for arranging the agreed payments to the Iwi Social Service involved.

The programme set out for “Paul” comprised work experience; Tikanga (including self-development and introducing “Paul” to his tribal elders and his obligations to whānau, hapū, iwi); Kapa Haka (introducing haka and action songs, waiata to competition level, and marae protocol); conservation and wilderness programmes; and sport. There was also provision for deciding how to address educational issues.

The case stands out because of the very serious nature of the charges, the empowerment of the whānau and Iwi Social Services, the detailed planning to set boundaries between CYPFS and Iwi, the tight monitoring and reporting systems imposed on whānau and Iwi, the extending of the net, holding the FGC on a marae, and the acceptance of Iwi to participate in the plan.

“Joseph”

“Joseph”, 15, admitted to the aggravated robbery of a taxi driver. Although it was the first time he had come to the attention of the authorities, a custodial sentence was a possibility because of the seriousness of the offence. There were others involved in the crime (which was committed to get money for drugs), but it was “Joseph” who admitted to the actual assault.

The FGC was attended by parents and members of the young person’s extended family, the victim with a support person, service providers, Youth Advocate and police. The key issues for the FGC were redress for the victim and the young offender’s drug abuse, in addition to holding the young person accountable for his offending. The participants agreed to a plan in which the offender would pay his share of the reparation to the victim, apologise (both verbally at the conference, and in writing) and complete 120 hours of community work, 60 hours of which would be spent cleaning the offices of the victim and the other 60 hours at a Kohanga Reo. This would be overseen by an Iwi-based community group under a Supervision Order. The representatives of this community group were at the conference and had known the young person for some time.

Other features of the plan included that the offender would reside with his parents under a strict curfew as well as a non-association order stopping him from seeing the other youths involved in the crime. Furthermore, the offender was ordered to attend every period of every school day, as well as see the school counsellor for his drug problem and aggressive behaviour. “Joseph” also had to write a progress letter to the victim at the end of three months. The victim was very impressed with the FGC process and has told his colleagues that it was well worthwhile.

This plan was completed successfully by the young person. It demonstrated the effectiveness of the Iwi-based social service in supervising the young person and monitoring the plan. Unfortunately the young person committed a burglary seven months later. However, because the Police were impressed by the work of the Iwi-based service provider, and by the way in which the young person had carried out the FGC plan, they were willing to try similar diversion again rather than automatically lifting the tariff. Thus the plan was doubly successful in that it kept “Joseph” from a custodial sentence in the short term and from more intrusive interventions in the longer term as well. He is now doing very well at a polytech. Everyone involved in the case is confident that he will not offend again.

“Jacob”

“Jacob”, aged 16, was charged with careless driving causing death and careless driving causing injury. The charges resulted from an accident that occurred when the young man took his girl friend, along with two others, riding in his mother’s car. The girlfriend died from her injuries. Neither drugs nor alcohol were involved.

The victim was her parents’ only daughter. She and “Jacob” had gone to school together and had known each other for some years. The families needed time to grieve before proceeding with the case, thus it was a couple of months subsequent to the event before final Family Group Conference (FGC) decisions were made.

The Youth Justice Coordinator’s visit with the victim’s family was extremely emotional. The mother asked to have a church service for the victim with the offender’s family before the FGC. Jacob’s family was anxious to accommodate the victim’s family as much as possible, so both families attended a service at their church, and the FGC was held immediately after the service. Food was supplied by both families, and they all introduced themselves, although they had known each other previously through the young people’s relationship. Twenty-one people attended the conference, including family members, a member of the clergy, Police, and the coordinator. At the FGC everyone presented their views and there was full agreement to the plan.

The victim’s family wanted a memorial for their daughter and the clergyman suggested that the young person, who played the guitar, should get a choir together for the church. This he did and the choir is still going even though it has been two years since it was begun. The plan included 150 hours community work which was organised and supervised by the same clergyman. The young person ended up doing far more than that because of his continuing involvement with the choir.

Both families expressed their desire to provide some guidance for the young person. They wanted him to settle down and do something positive with his life. They didn’t want the accident to impede his education, and therefore asked that he sit five School Certificate subjects. This part of the plan was monitored by the young person’s family together with the participating clergyman. The victim’s family also took an interest in the young person’s progress at school, and monitored it themselves in an informal way.

Two years after the accident “Jacob” is still going on with the choir, and had an exceptionally good school report, a copy of which was sent to the victim’s family. They expressed their satisfaction at seeing that their wishes had been carried out.

The coordinator believed that this case fulfilled the spirit of the CYP&F Act in that the young person was held accountable for his actions in a particularly appropriate fashion, and there was healing between the victim’s family and the offender and his family.

“Alex”

“Alex” had a long history of care and protection problems that his Youth Justice Coordinator (YJC) described as “shocking”, assessing his case management as unsatisfactory. He also had come to the attention of the Police. However, the first time he appeared in court was at the age of 15, charged with male assaults female. The victim was his mother.

He spent some time in custody, allowing his whānau time to assess his situation and to assimilate the seriousness of his offence, which carried a possible two-year jail sentence. In so doing they resolved to provide full support to their young person by taking part throughout the programme.

The YJC encouraged an holistic approach to “Alex’s” plan which was taken on board by the kaumatua who became involved. They decided that they would have to address his problems on every possible level: spiritual, emotional, cultural, educational and physical. The whānau held two conferences to look at how they would be involved and contribute effectively towards their young person’s future direction. The FGC participants included the young person and lawyer, his mother (the victim), seven other whānau members, and the professionals involved in the case.

An interim plan was prepared by the whānau and was discussed during the FGC. The plan included a proposal for the young person to be allowed to return home under conditions aimed at holding him accountable for his behaviour, i.e. that he be placed under curfew, and that the house rules set by the whānau be adhered to. During that time the young person, the whānau and the victim spent a period in retreat, during which they participated in sessions with a tohunga, to allow the healing process to begin and to develop an exceptionally detailed timetable of training aimed at an effective transition for “Alex” into society and home life. The final plan comprised:

- One module on whānau development (including sessions with a tohunga, meditation, counselling, karakia, cultural awareness, recreation, responsibilities, and group and individual discussions);
- One module on personal development (including a broad range of training from respect and motivation to sex education and sport, and with a focus on developing the young person’s relations with his whānau); and
- A set of long-term educational and career goals for the young person. Each element of the plan was associated with an objective, a standard of performance, and a responsible party.

At the court hearing the Judge agreed to the plan as proposed and the young person was remanded at large to live under the supervision of the whānau (with his grandmother) and to report for a further Youth Court sitting at a later date.

“Alex’s” case was distinguished by a high level of whānau involvement, and particularly fine work on the part of the young person, the victim, and their whānau. It featured a decision made together by the young person, the victim, extended family and whānau; and the recognition of culturally diverse processes within the Youth Justice system.

The presiding Judge was impressed with the plan and fully supportive, accepting the conferences decisions and recommendations in their entirety. So was the Youth Aid Sergeant impressed, saying “It will be the best one that’s come out of our conference... I’ve never seen one like that.”

As events transpired, the plan was only carried out for the first month. A young woman that “Alex” had met while on remand at a DSW residence came to visit, and he withdrew from the programme to go away with her. Nevertheless, there has been no news of his coming to the attention of the authorities in the six months since his leaving the area.

“William”

“William” first came to the attention of care and protection staff at the age of 13 for difficult behavioural problems. He was living in a provincial town with his maternal grandmother who had legal custody. “William” had been abused by immediate family members and Care and Protection Family Group Conferences were held on his behalf in several different parts of the country, with whānau and local Iwi representatives in attendance.

“William” was placed in different parts of the country, with one parent for a trial period and later with the other parent. After he absconded, an Iwi placement was made with a service-provider whānau that had some connections to the young person’s family, and this was seen as an alternative to an institutional placement. It proved more successful than his previous placements as “William” continued to live there for some time, and received counselling for his behavioural problems.

At the age of 15 “William” was charged with several offences. Two Youth Justice Family Group Conferences (FGCs) were held, one for charges of robbery by assault, unlawfully interfering with motor vehicles and theft, and another for assault, robbery and burglary.

A year later “William” was arrested for offences including 23 burglaries (in a neighbourhood of holiday homes), four charges of male assaults female (the victim was his partner, with whom he had a child), and three thefts, all of which he admitted. He was placed in a DSW Residence. The coordinator to whom he was referred at this point met him for the first time, and discussed with him the preparations for his FGC (who should attend the FGC and how to contact them).

After their experience with Care and Protection FGCs family members were not keen to participate. The coordinator needed to build their confidence in the Youth Justice system, emphasising the importance of family and whānau involvement in finding a way to address the young person’s situation and his future. However, as might be expected from the early abuse issues, family dynamics were extremely complex.

The conference was adjourned to allow three issues to be explored:

- the option of a placement with his grandmother;
- follow-up work on the part of the family regarding long-term options; and
- how to address matters relating to his offending.

When the FGC was reconvened a plan was put in place, but there was still more work required on long-term options. It was reconvened again by the Youth Justice Co-ordinator to review the young person’s situation with regard to custody, sentencing for all offending and the content of a psychiatric report ordered by the court.

Ultimately the plan depended on the original whānau (with which “William” had been placed with when he was younger) taking him in again, and on the fact that the young person himself was determined to take this opportunity to resolve his problems while he still had the options available to him under the youth justice system. A three-month Supervision with Activity Order was made. The rest of the plan included written apologies to all the victims and 180 hours of community work, as well as drug and alcohol counselling, anger management counselling, parenting skills, life skills, family relationships, and recreation, all monitored by the caregiving whānau group.

The plan stood out for the way it focused on the young person’s needs, giving him all the assistance he required to move ahead with his life. The victims’ views were all taken into account, and despite the family difficulties, a placement was found with people who had a real connection with “William”. The service provider was able to report to the Youth Court Judge at the end of the Supervision with Activity Order that the young person’s “behaviour, attitudes and outlook for the future have changed dramatically for the better” and he has not re-offended since.

“Andrew”

“Andrew” was arrested and charged with kidnapping (of his girlfriend and a young family member), wilfully setting fire to a property, assault, assault with a weapon, and wilful damage (all in one drunken episode). Because of the seriousness of the offences and the fact that he was only a few days away from his 17th birthday, his case would be heard in the District Court and it was for Probation to make the final recommendation to the court. Nevertheless, as “Andrew” was still 16, it was ordered that the Youth Justice Coordinator (YJC) convene a Family Group Conference (FGC) in relation to the offending.

The FGC was well attended with participants from all major players: the young person, his parents and the wider whānau (mostly from out of town), kaumatua, the victim, and the Youth Aid Officer. Probation was also represented so that they would be part of the process and on board with the family decision. Family dynamics were complicated by the fact that “Andrew” had been the victim of very serious intergenerational sexual abuse. Preparation for the conference had been particularly difficult and time consuming because of the department’s long history (in different parts of the country) of care and protection and youth justice involvement with the young person and his family. The meeting began with karakia, and an opportunity for each of the participants to voice their goals for the outcome of the conference.

The FGC stood out in the coordinator’s mind because the young person deliberately and seriously wounded himself early in the proceedings, when he was asked to say what he wanted to come out of the conference. He was taken to hospital, but was able to return in time for the conference to continue, which it did with the participants in a very heightened emotional state. In the opinion of one of the professionals, it had the effect of “shocking the family into reality”.

“Andrew” apologised to the victims at the FGC, and plans for his making reparations were put into place. His family agreed to raise funds to contribute to the reparation costs. The family decided, and the other participants agreed, that a custodial sentence would be very inappropriate for “Andrew”, and that he needed to have counselling to help him deal with his history of being abused, alcohol problems and difficulties with anger management. The plan focused on keeping the young person at home with members of his family.

A significant aspect of this case was the work that went into the preparation for the conference and the co-operation between Youth Aid and the YJC. However, the Probation Officer did not make the expected recommendation, which was a surprise and a disappointment to the rest of the participants when they arrived in court. In the words of the Youth Aid Officer:

“And they went through all the facts, they saw our grief, our pain, our love and at the end of the day they write up a bloody nonsense report: the easy way, lock him up. A custodial sentence, because that was the easiest way, and we were saying to them, no, he needs psychiatric help, he needs counselling for his drug addiction and he needs counselling for his family, all that stuff came out, it was, it was a really neat amazing FGC. Till we get to court and that’s when I first saw it, probation report... we had all thought — and his lawyer — that we were going to get what we wanted. And his lawyer threw it at me and he said, look at this, what are we going to do with that? I said, well you do your bit, I’ll do mine. So he did his bit and then I got up and said to [the] Judge... “It is unusual for the police prosecutor to argue with a custodial sentence ... Today I’m going to do that.” So I did that, argued against the custodial, I went through all that and I knew that we were on a winner because all this time [the Judge] was nodding [in agreement].”

The Judge accepted the family’s plan, and a full year went by with no re-offending, an outcome which, in the opinions of the YJC and Youth Aid Officer, validated the work of the conference and the decision of the court. The plan managed to address the needs of the victims, make the young person accountable for his offending, and at the same time deal with the family’s outstanding care and protection issues. Against the odds, it kept this young person free of a custodial sanction.

“Hamish”

“Hamish”, 14, was charged with sexual violation (sodomy), indecent assault and possession of an offensive weapon. When the police visited his home, “Hamish” was identified and immediately apprehended. He was interviewed later the same day by a police detective in the presence of a social worker. The young person initially denied the allegations but later admitted to them as outlined.

Prior to being charged, “Hamish” had not appeared before the Youth Court. There was no history of Social Welfare involvement, and he seemed to come from a caring family genuinely distressed by his offences. After the arrest was made, his family assumed responsibility for both his counselling and maintaining his curfew prior to the Family Group Conference (FGC).

The Youth Justice Coordinator (YJC) was directed by the Court to convene an FGC. Those present included the young person, his parents, members of his extended family, a family friend, Youth Advocate, Psychologist, Youth Aid Officer and the YJC.

The police did not agree with the original recommendations of the FGC because they believed that the seriousness of the offending warranted a higher tariff decision. They insisted on Supervision with Activity followed by a Supervision Order. In response to this a second plan was formulated and all parties eventually agreed.

The new plan entailed the completion by “Hamish” of assigned hours of community work, while his family contributed money towards the victim’s family holiday. The plan addressed supervision on a daily basis — during school, his paper run and sports activities. The plan also included counselling/therapy for the young person, with a detailed schedule of appointments. The parents indicated that they may need financial assistance for continuing counselling arrangements for the young person.

Provisions for monitoring the plan were addressed in some detail. The school “Hamish” attended took responsibility for monitoring his leaving time and the parents marked the time of his arrival home. A social worker would contact the young person’s family once a week to monitor the Orders. This was to be gradually phased out as the Orders ran their course, depending on the counselling/therapy and the general progress of other parts of the plan. Parental supervision was of paramount importance throughout the duration of the plan. All “free time” was monitored by parents or delegated to extended family — namely the grandparents.

The case featured a pro-active approach by the young person’s family, taking on responsibility prior to the FGC, immediately after arrest. It reinforced the importance of the role played by professionals of the participating agencies to take a firm stance on what they felt were the most appropriate options.

“Jason”

A Family Group Conference (FGC) was held for “Jason”, 16, charged with wounding with intent to cause grievous bodily harm and aggravated burglary. This was not the first time “Jason” had been involved in offending. He first came to notice about a year prior to these offences. He had had four FGCs arranged for him for previous offences, but had been unco-operative. He had also spent time in DSW residential centres. In the last two years “Jason” drifted between his parents’ and girlfriend’s homes. His family were concerned about his well-being and attempted to stabilise his movements, but unfortunately their efforts were not successful.

The latest conference was attended by family members and the victims. The participants tentatively proposed that “Jason” be given one more chance to prove to family, the department and himself that he was able to change and be involved in more positive aspects of life. When confronted by the victims “Jason” appeared to be remorseful, aware of the seriousness of his offending and accepting responsibility for his actions. The plan that resulted was a very strict one, which “Jason” and his family saw as the best way to hold him accountable for his offending and assist him to correct his negative behaviour.

All of the participants were in agreement that “Jason” should be sentenced to Supervision with Activity, followed by a three-month Supervision Order. This involved his residing with his aunt and uncle. The other aspects of the plan were monetary reparation to each of the victims, to abstain from drinking alcohol, to be under 24-hour supervision, non-association with the victim, to report to his social worker (supervisor) every week, to attend a course, and take up employment offered and remain in that employment until reparation was fully paid.

It was also agreed by all present at the conference that should “Jason” breach either of the orders he should be brought before the Court to be sentenced to Supervision with Residence. This plan was successfully completed by the young person and he is now doing very well working in an apprenticeship.

The case stands out for the way in which the family was brought back to try and give their young person another (and probably his last) chance, and for the extraordinary success that they and “Jason” achieved. What is particularly impressive is that, given the very serious nature of the offence and the young person’s grim history of unsuccessful interventions, all the participants and professionals involved in his case were still determined that they would not give up on him, and that in the end they were able to turn him around.

参 考 資 料 #3-2

New Zealand における Family Group Conference の
具体的事例—再犯
(from G. Maxwell & A. Morris, Understanding Reoffending)

Appendix 2

Case studies illustrating the different reconviction categories

The persistent reconvicted

Freddy's life and family group conference experiences is quite illustrative of those in the sample who were persistently reconvicted. This group's lives were characterised by frequent involvement with the police, the courts and prison. Their family lives were usually transient, unhappy and, more often than not, violent. Indeed, roughly one third of this group were regularly smacked, hit with an object, and 'severely thrashed'; roughly one third were subject to such violence occasionally or sometimes. The young people persistently reconvicted generally lacked love, support and friendship while growing up, and were heavy users of drugs, alcohol and solvents. Many of their school lives were brief and troublesome. In their spare time, they were often bored, and spent much of their time hanging around with friends and little time with their families. Furthermore, their experience of family group conferences, and of the criminal justice system in general, was quite negative: they did not feel involved in the decisions, they did not feel remorseful, they often did not complete the tasks agreed to and tended to report being shamed by the process. Finally, for many of them, life had not gone very well in the last five years: they had not found a constructive place for themselves. However, there were exceptions to this 'typical' picture of those persistently reconvicted (as, of course, there were with all other groups as well). Indeed, a small number of them came from stable family environments, where family violence did not occur, and where the young person spent considerable time with their family. Furthermore, some of them had trouble free years at school, did not abuse alcohol or drugs, and had positive experiences at the family group conference.

Freddy

Family, school and peer experiences

Freddy is a part Maori, part Pakeha young man who was persistently reconvicted following his family group conference. He lived with his mother and father until he was four, and, after his mother died, with his father until the age 13. Although both his parents worked, Freddy said they didn't have enough money to live on. After being kicked out of home, he lived 'all over the place, [in a] boys' home, [on the] streets'. He had also moved around 15 times since his family group conference. As such, his later years were particularly transient. While Freddy stated that his childhood was very happy, he thought his family was very unhappy. He did not think anyone cared about him while growing up, and said he 'never' spent much time with his father. Freddy was also subjected to violence, sometimes involving being smacked, hit with a strap or object, and occasionally escalating to a 'really severe thrashing'. He also reported that he regularly watched adults have verbal fights at home, and that his whole family were heavy users of alcohol. Although Freddy had a time to come in by during his school years, he only did so sometimes, and said his father did not usually know where he was or who he was with, except while he was at primary school. He also regularly ran away from home.

Freddy said he did not have good friends while growing up, and that some of those he associated with had criminal convictions. He was not involved with sports or other clubs, although he thought he was very good at sports. Much of his spare time was spent hanging around town, with friends, being bored and, to a lesser extent, doing things at home. Freddy's school life was transient, brief and problematic. He did not attend a pre-school or Kohanga Reo, and left school in the 3rd form. He rated his school performance as 'very poor', and got into trouble at intermediate and primary school for fighting and also, at primary school, for truanting. He was a regular truant at high school, and sometimes got into trouble for fighting and ganging up on other children. Freddy was suspended and eventually expelled from his high school. He was a regular tobacco and marijuana smoker, drinker and solvent 'sniffer' before he left school, and

first had sexual intercourse before the age of 14. He still smokes and drinks alcohol regularly, and uses marijuana occasionally. Freddy is proud of his cultural background and, although he doesn't know much about it, said he tries to get involved even if feeling a little unsure.

Offending history

Unsurprisingly, like others in the sample who were persistently reconvicted, Freddy had a lot of contact with the police while growing up, and indeed had been in trouble with them before turning 17 for property and traffic offences. Like many other reoffenders, he admitted committing offences that were not detected, including not only property and traffic offences, but also drug and vandalism offences. Amongst other things, Freddy stated his offending was triggered by alcohol and substance abuse, boredom, anger, 'going along' with peers, getting even and getting material things. Other factors he mentioned included that nobody cared, he had nothing to lose, and it was a bad time in his life.

Family group conference experiences and beyond

Freddy's experience of his family group conference was largely negative. He did not feel that he was involved in making decisions at the family group conferences, and did not agree with them. He also stated he was made to feel bad by his family and the police. Perhaps unsurprisingly, he did not complete the tasks set down for him. Although Freddy said he could understand how the victim felt, and that he showed the victim he was sorry, he also said he was not sorry for his offending – possibly because the victim did not accept his apology. Overall, he did not feel that he had been able to make good the damage that had been done, and said only his foster parents offered him support after the family group conference. The family group conference did, however, result in him having somewhere to live.

Subsequent to his family group conference, Freddy was involved with the police, and sometimes with the courts, for all the aforementioned offences, plus also violent

offending. He also self-reported all of these offences, with the exception vandalism. His offending resulted in contact with police diversion, the Youth Court and the District Court, as well as family group conferences. Whilst he felt quite fairly treated by the Youth Court, he did not feel this way about his contact with the police, family group conferences and especially the District Court. Freddy had been sentenced to the full array of penalties, involving fines, probation, community service, periodic detention, corrective training and prison.

In the last five years, Freddy describes his life as having not gone that well. He was unemployed for more than two years, although to his delight he has finally succeeded in getting a job through friends. Although he has had a close mate to confide in, he has not had a serious personal relationship. He has also experienced periods of depression and, to a lesser extent, mood swings and panic attacks.

The improving reconvicted

The improving reconvicted share many, though not all, of the characteristics, life and family group conference experiences of the persistently reconvicted. Many of them felt someone cared for them while growing up, although many of them also never spent much time with their fathers. Most of them were subject to violence to varying extents, and also watched physical and/or verbal fights at home. Being in trouble at school, and leaving school early with no qualifications was also common, as was heavy drug, alcohol, and/or solvent abuse. Being bored on most days was also frequently reported by them. In terms of their experience at their family group conference, a couple were very positive, with the remainder reporting mixed feelings. Distinguishing them from the persistently reconvicted, however, was a notable improvement in their lives over the last five years. Getting a job, having a partner and family, completing training and succeeding at sports were some of the positive life events that had happened to them.

Joe

Family, school and peer experiences

Joe is a young Maori man who following his family group conference was reconvicted persistently, but who had not been reconvicted in the 12 months before he was interviewed – hence his classification as an ‘improving reconvicted’. He was born to young parents who were living together although not married. They were both employed although Joe said they did not have enough money to live on. He lived with both his parents until he was two, with his mother until the age of 11, then with two uncles for a year or so each. His transient upbringing ended with 6 months in the Legionnaires. Joe felt that he did not have people in his life who cared about him. He never spent much time with his father although he was close to his grandmother. Overall, he thought his childhood and family life was moderately happy. He said that he rarely or never watched adults at home fight either physically or verbally; however, he was himself occasionally smacked or hit with a strap or object. No-one in his family abused alcohol or drugs. During his school years, Joe had a time to be home by but did not often come in by that time. Moreover, he said his caregivers usually did not know where he was or who he was with. Running away from home was something Joe did reasonably often.

While growing up, Joe said he had good friends, who didn’t have criminal convictions. He was heavily involved in sports, which occupied some of his spare time most of the week. He thought he was very good at sport. Joe also spent much of his spare time with friends and feeling bored. He said he hardly ever hung around town and never did things at home or with his family. As far as school was concerned, Joe rated his performance as average. He was in trouble right throughout school for truanting and, in his secondary school years, for fighting. His total time spent in education was brief – he did not go to pre-school and was expelled at the end of the 3rd form. Before reaching school leaving age, he had tried smoking tobacco, sniffing solvents, had drunk alcohol in moderation and had tried marijuana once or twice. Now, however, Joe does not use

tobacco, alcohol or drugs at all. Joe does not know much about his cultural background; however, since getting of jail he is very proud of it.

Offending history

Before reaching the age of 17 Joe had been in trouble for property offences, but did not self report any other offending. Boredom and not feeling cared for triggered his offending he said.

Family group conference experiences and beyond

Like other 'improving reconvicted' young people in the sample, Joe had mostly negative feelings about his family group conference experience. He did not feel he was involved with the decision making process, did not feel sorry about his offending, and said that the police made him feel like a bad person. He said he did not show the victim he was really sorry, did not think the victim accepted his apology, and did not feel he was able to repair the damage done. Joe said he did not resolve to keep out of trouble, and did not complete his tasks because the police and social workers did not set things up for him. More positively, he said he agreed with the decisions, could see how the victim felt, and, in retrospect, thought that what he did was wrong.

Following his family group conference, Joe committed property offences resulting in contact with police diversion and the District Court. He subsequently received fines, probation, periodic detention, corrective training, and finally a prison sentence. He did not self report any offending over this time. Joe felt that the police and the District Court dealt with him very fairly.

Looking back at what led him to stop offending he said that the 'time in jail made me click, [also] getting a job, [and having a] good girlfriend'. Over the last few years, things have really improved for Joe. Most importantly, according to him, he has got a job. He hopes to 'get set up' in the future and thinks that this will happen. He also has a girlfriend whom he can confide in.

The occasional reconvicted

For the majority of the occasional reconvicted, things had gone average to very well for them in the last five years. This usually revolved around having a partner, having children, succeeding at sports, getting a job, and undertaking training or further education. While growing up, the majority felt they had someone who cared for them, although many of them never spent much time with their fathers. In general, most said they had an average to a very happy childhood and family life. Just under half of this group reported being smacked or hit with an object regularly while growing up. Most of the remainder reported this occurring occasionally or rarely/never. A few reported receiving regular 'severe thrashings', while most said they never did. The majority, in roughly equal numbers, said they occasionally or regularly witnessed verbal fights at home. Most said they rarely/never saw physical fights. The majority also reported that a family member(s) abused alcohol and/or drugs. Most felt they had good friends growing up, and all but one were involved in sports, with most saying they were very good at them. Most, however, said they were bored most days when growing up, with slightly fewer saying they never or hardly ever spent time at home or with their family. In terms of school life, roughly equal numbers did and did not have a qualification when they left school. All had been in trouble at high school to varying extents, mostly though for truancy only. Before reaching school leaving age though, all but one were regular tobacco smokers, and most drank alcohol quite a lot at times. All of the group, in equal numbers, reported using marijuana either occasionally or regularly. The majority, however, had never or only once or twice tried sniffing solvents. In terms of offending before the age of 17, most of this group had been in trouble with the police for one or two types of offences, a few of which were violent offence(s). Regarding their experiences of the family group conference process, more were remorseful and accepted their responsibility than in the case of the improving reconvicted.

Dave

Family, school and peer experiences

Dave is a part Samoan, part Pakeha young man who has been occasionally reconvicted since his family group conference – that is, he has appeared in court more than once but had committed less than five offences. He grew up with both his parents, who were married, and lived in one location throughout his school years. His father worked and Dave thought that they had enough money to live on. Unlike most others in this group, he did not think anybody cared for him while he was growing up, and never spent much time with his father. He said he was occasionally smacked and hit with an object, although rarely/never given a bad beating. Nor did he witness his parents argue verbally or physically, or say that any member of his family abused alcohol and/or drugs. During his school years, Dave had a time to be home by, and he abided by that time. When he was out, he said his parents sometimes knew where he was and who he was with. He had run away from home two or three times.

Growing up, Dave had good friends who did not have criminal convictions. He was involved with weight training for a small part of a week, but, overall, said he was only average at sports. Most of his spare time was spent with friends or feeling bored. He did not often hang around town, and said he never did things at home or with his family. At school, Dave thought he did quite poorly. However, he had a lengthy education, from pre-school until the end of the 7th form, attaining University Entrance along the way. At primary school, he sometimes got into trouble for stealing from other children. At intermediate, he was frequently in trouble for fighting, and was eventually suspended. At high school, he sometimes got into trouble for fighting, truanting and ganging up on other children. This resulted in suspension and finally expulsion, so Dave went to another school to finish his education. Before leaving school, Dave smoked tobacco regularly, marijuana occasionally, drank alcohol quite a lot at times, and tried sniffing solvents once or twice. Now, however, he only drinks alcohol in moderation. In terms of his cultural background, he feels lacking in knowledge about it, but generally feels OK about his ethnicity.

Offending history

Before he turned 17, Dave got in trouble with the police for arson. He also self reported violence, property, drugs and vandalism offences. Boredom, wanting excitement, going with friends and drugs are some of the reasons for his offending. He also said that he wanted to get things, offended for the 'hell of it', and because there was nothing to lose. Subsequent to his family group conference, Dave did not self report any offending, but got into trouble for property, vandalism and drunk and disorderly offences. This resulted in appearances in the District Court and sentences of fines, community service and periodic detention. Dave did not think the police treated him that fairly, but was especially aggrieved at his treatment by the court.

Family group conference experiences and beyond

Dave's experience at the family group conference was, like most others in this group, a mixed one. On the positive side, he completed the tasks, could understand how the victim felt, tried to show the victim he was really sorry, and resolved to keep out of trouble in the future. Looking back, he still feels what he did was wrong. On the negative side, Dave said he did not feel involved in the decision making process, and did not agree with the decisions. He also said his teachers made him feel like a bad person, and that he wasn't sorry about his offending because he was 'only with them [co-offenders]'. He did not know if the victim accepted his apology, nor did he know if he had been able to put right the wrong. Following the family group conference, he said his siblings were supportive. In the last five years of his life Dave said things have gone averagely for him. His family is most important to him, and he hopes to travel. He has attended Polytechnic and, despite periods of unemployment, has had two jobs. He has also had good mates to confide in. Dave has now stopped offending, saying that he 'looked at the people doing well and realised they were straight and the others were losers'.

The once only reconvicted

For most of the once only reconvicted group, life in the last five years had gone really or quite well. Nearly all of this group felt that someone cared for them, although nearly half said they never spent much time with their father. Overall, more said they had happy families and childhoods than unhappy ones. Most of them also said they had good friends when growing up. In terms of experiencing violence as a child, relatively equal numbers had been hit or smacked sometimes, occasionally, or rarely/never, while nearly all said they had never been 'severely thrashed'. Most rarely or never saw their parents fight physically, although roughly equal numbers said they witnessed verbal fights occasionally or regularly. Only a few said family members abused alcohol and/or drugs. All of this group were involved in sports, with most thinking they were pretty or very good at them. Slightly more said that they never, rather than frequently, spent time at home or with their families. What did stand out was that the majority left school with no qualifications, and had been in trouble at high school to some extent. Most had never tried sniffing solvents or had tried it only once or twice. A few were heavy users of marijuana, with even more being regular smokers before school leaving age. Most admitted to using alcohol quite a lot at times over this period. In terms of early offending, most indicated they had been in trouble with the police for one or two different types of offences, though primarily for property offence(s). Regarding their family group conference experiences, quite a few were positive, but more reported mixed emotions.

Joel

Family, school and peer experiences

Joel is a young New Zealand European who was reconvicted only once following his family group conference. His parents were married, and his father worked, bringing in enough money for them to live on. He lived with both his parents until he was 11, and after that with his mother. Joel spent quite a bit of his time with his father, and thought his family cared for him. He was also close to his uncles and grandparents. In general,

he describes his childhood and family life as being very happy. Joel was occasionally smacked or hit with a strap or object. He also occasionally watched his parents fight verbally, but not physically. No-one in his family abused alcohol or drugs. During his intermediate school years, Joel had a time to come in by which he said he did not always abide by. He did not have a time to be home by at secondary school. Apart from when he was at primary school, his parents did not usually know where he was and who he was with. Joel had, though, never run away from home.

Growing up, Joel had good friends, some of whom had criminal convictions. He thought he was very good at sports, and was quite involved with rugby, which occupied a good part of his spare time. He was also a member of Scouts. Other spare time activities included spending a lot of time with friends, quite a bit of time at home, and hanging around town. Despite this activity, he did say he was bored most days. Joel went to preschool, three primary schools and one intermediate and secondary school. He left school at the end of the fifth form with no qualifications. Overall, he thought he did quite poorly at school. While his primary and intermediate school years were trouble free, he sometimes got into trouble at high school for truanting and fighting, resulting in him being suspended. Before he left school, he had not tried tobacco or sniffing solvents, but had used alcohol in moderation, and smoked marijuana occasionally, as he still does now. In terms of his cultural background, Joe knew little about it. He is only able to trace it back one generation, but in general feels OK about it.

Offending history

Before he turned 17, Joel had been in trouble with the police for property and drugs offences, and also self-reported these plus violent offences. He said drinking and the need for excitement triggered his offending. Joel was reconvicted once following the family group conference for a violent offence, which was dealt with in the District Court and resulted in a fine.

Family group conference experiences and beyond

Joel's experience at the family group conference was a very positive one. He said he felt involved in the decision making process, agreed with the decisions, and was not made to feel like a bad person. Moreover, he could understand how the victim felt, was sorry about his offending, and tried to demonstrate this to the victim. Joel thought the victim accepted his apology, and he felt he had been able to repair the damage. He resolved to keep out of trouble in the future because of his family, and said that looking back he still feels what he did was wrong. The family group conference also resulted in him having a place to live, which he said was very helpful. Subsequent to the family group conference, he said his family, friends, and the social worker had given him support. Overall, life has gone very well for Joel in the last five years. As he put it, he's 'got a good job, a nice girlfriend [and a] good supportive family'. He has worked as a freezing worker and has not had periods of unemployment. Joel has also achieved at rugby, and hopes to travel.

The not reconvicted

The not reconvicted tended to come from stable, caring and non-violent family environments. They did not experience trouble at school, left with qualifications, had good friends while growing up who did not have criminal convictions, occupied their spare time with sports, friends, and were never bored. They also had a positive experience at the family group conference. Like all of these groups, however, the not reconvicted are not a homogenous group. Moreover, in terms of life and family group conference experiences, there does appear to be less similarity in the not reconvicted than among those who were persistently reconvicted. Indeed, a reasonable number of the not reconvicted experienced problems at school, had been subject to violence in the home, had extensive offending prior to age 17, had abused alcohol and/or drugs, and had negative experiences of the family group conference process.

Sandra

Family, school and peer experiences

Sandra is a young New Zealand European woman who has not been reconvicted since her appearance at a family group conference. She grew up in one family home with her mother and father who were married and both employed. She thought her family had enough money to live on. Sandra described her childhood as quite happy, and her family as very happy. She spent quite a bit of time with her father, admired both her parents, and was also cared for by and close to her extended family. Sandra was not subject to violence at home, did not watch adults have physical fights, although occasionally heard verbal arguments. None of her family were heavy users of alcohol or drugs. During her school years, Sandra had a time to be home by, and made sure she was home by that time. She said her parents almost always knew where she was and who she was with when she went out – although she did admit to running away overnight once.

Sandra had good friends while growing up, who did not have criminal convictions. She was actively involved in horse riding and thought she was good at sports. Most days of the week were spent doing things at home, with friends, or playing sports. Sandra said she never hung around town, and never got bored in her spare time. At school, Sandra thought she performed averagely. She attended a pre-school, and went to one primary, intermediate, and secondary school, leaving at the end of her 6th form year with School Certificate. She did not get into trouble at school, and during this time never tried marijuana or sniffing solvents. Sandra did admit to having a few puffs of cigarettes, and drinking alcohol in moderation before she left school. She now smokes tobacco occasionally and drinks alcohol in moderation. Sandra is very proud of her cultural background and can trace her ancestry more than four generations, although she has not always been this knowledgeable about it.

Offending history

In terms of early offending, Sandra's only offence, detected or undetected, was a drink driving offence before the age of 17. This she suggests was triggered by wanting to go with friends and, of course, drinking. Sandra otherwise has had no contact with the police. Indeed, she commented that she was 'not at all a serious offender, [but that it was] just one thoughtless, silly incident.'

Family group conference experiences and beyond

Sandra's experience of the family group conference was a good one. Indeed she 'felt the family group conference was positive and [that] it worked for me.' She felt involved with the decision making and agreed with the decisions. Unsurprisingly, she also completed her tasks. Sandra indicated she was not made to feel like a bad person, was sorry about her offending, and felt she was able to repair the damage done. Looking back, she still felt that what she did was wrong. She also resolved to keep out of trouble in the future because of the penalty involved. The victim was not a factor as her offence was a victimless crime. Sandra also said that her family supported her following the family group conference. In the last five years of Sandra's life, things have gone very well for her. She has completed training courses, and has the desire to manage her own business which she feels she will fulfil. She has not been unemployed, has received awards at her work, and has also succeeded in sports.

参 考 資 料 #4

再犯研究における面談資料
(from G. Maxwell & A. Morris, Understanding Reoffending)

SINCE THE FGC

18 Have you had any involvement with police or courts because of?

Yes	no

- Violence
- Property
- Drugs
- Vandalism
- Other _____

Did it involve contact with?

- Police Diversion
- FGC
- Youth Court
- District Court
- High Court

Did any of the following happen?

- Fines
- Probation
- Community Service
- PD
- CT
- Prison

How fairly were you dealt with in each of these that apply?

- | | | | | |
|-------------|-----|-------------|----------------|-------------------|
| 1 | 2 | 3 | 4 | 5 |
| Very fairly | | | | Not at all fairly |
| Police | FGC | Youth Court | District Court | High Court |

19 Have you committed any offences that were not detected over this period? Yes No

- Violence

--	--

Srvio X20
- Property

--	--

Srprop X21
- Drugs

--	--

Srdrug X22
- Vandalism

--	--

Sr vand 23
- Other _____

--	--

Sr oth 24 *Srany X25*

20 Do any of your close friends that you usually hang around with offend or have a criminal history? Yes No *Crimfr X26*

21 Have you belonged to a gang in the past 5 years? Yes No *Gang X27*
Crimass =Y to X26 or X27

22 Looking back on the past five years or so, what has led you to stop offending?.

23 Looking back on the past years or so, what has led you to keep offending?

THE FAMILY GROUP CONFERENCE Options for Q25-33 are Yes No Partly DK

- 24 Are you able to remember this? Yes No *Fgcrem X28*
- 25 Did you complete the tasks set down at the FGC? Y N Part *Fgctask X29*
- 26 Did you feel that you were involved in making the decisions at the FGC? *Fgcddec X30*
- 27 Did you really agree with the decisions? *Fgcagr X31*
- 28 Did the way it was dealt with make you feel that you are a bad person? *Fgcshame X32*
- 29 Did you understand how the victim felt? Could you see their point of view? *Fgcemp X33*
- 30 Did you really feel sorry about your offending? *Fgcsorry X34*
- 31 Do you think you showed the victim that you were really sorry? *Fgcshsorr X35*
- 32 Do you think the victim accepted your apology? *Fgcvacop X36*
- 33 Do you think that you were able to make good the damage you had done? *Fgcrepair X36*
- 34 Looking back, do you feel that what you did was wrong? *Fgcrem2 X37*
- 35 Did you decide to keep out of trouble in the future? Yes No *Fgcint X38*
- 36 Were any of the following arranged to help you? (Tick each box that applies)

	Planned	Happened	Helpful
Schooling			
Jobs			
Training			
Somewhere to live			
Counselling			
Other			

37 After the FGC, what people and agencies gave you support? *Famsupp X39*
Othsupp X40

EARLY OFFENDING

38 Before you were 17, what kinds of things got you into trouble with the police? Yes No

Violence			<i>Earlyviol x41</i>
Property			<i>Earlyprop x42</i>
Drugs			<i>Earlydrug x43</i>
Vandalism			
Other			

39 Did you do other things they did not find out about? Yes No

Violence			<i>Earlyounre x4</i>
Property			<i>Early punre x4</i>
Drugs			<i>Earlydunre x4</i>
Vandalism			
Other			

Early any X47 (excluding drugs)

40 What kind of things used to trigger your offending

<i>Trig ex x48</i>	Bored	1	To get things	<i>Trigmat x52</i>
<i>Trig ex</i>	Wanted excitement	2	To get even	9
<i>Trig fri x49</i>	To go with friends	3	For the hell of it	<i>Trig ex</i>
<i>Trig drg x50</i>	Drinking	4	Nobody cares about me	<i>Trigpes x53</i>
<i>Trig drg</i>	Drugs	5	Nothing to lose	<i>Trigpes</i>
<i>Trig drg</i>	Glue	6	A bad time in my life	<i>Trigpes</i>
<i>Trig reb x51</i>	Being angry	7	Other	14

THE FIRST FIVE YEARS Now we would like to ask some things about what your life was like while you were growing up?

- 41 How old were your parents when you were born? *Parage x54*
 42 When you were born, were your parents living together Yes no *Parlive x55*
 43 Were they married? Yes no *Parmar X56*
 44 Were your parents working? Yes No If yes, what did they do?
 45 Before you were born, do you think that your parents wanted you? *Wanted x57*
 No Not then, but later Yes DK

GENERALLY WHILE GROWING UP

- 46 Who did you live with, indicate whether with: *Livborn x58*
 Mother Father Mother & Father Other _____
 47 Indicate the number of places you lived during your:
 Pre school years 1 2 3 4 5+ *Livpre x59*
 Primary & Int. school years 1 2 3 4 5+ *Livprim x60*
 Secondary school years 1 2 3 4 5+ *Livsec x61*
 48 Did you attend a pre-school such as, Kindergarten or Kohanga Reo? *Attpre x62*
 Yes No Don't Know
 49 Did you have people in your life who cared about you? *Caredfor x63*
 Yes No
 50 Do you think that you had good friends while you were growing up? *Goodfri x64*
 Yes No Some of the time
 51 Were you involved with sports or other clubs while growing up? *Sports x65*
 Yes No Some of the time
 52 Did you ever run away from home and stay out overnight? *Runaway x66*
 Never Once 2 or 3 times More often
 53 While growing up did you spend much time with your father? *Timefa x67*
 Quite a bit Sometimes Never
 54 Generally did you have a time that you had to be in by? *Timinint x68*
 Intermediate. school years Yes No *Timinsec x69*
 Secondary school years Yes No

- 55 Did you come in at that time?
 Intermediate school years Yes No Sometimes N/A *comeinint x70*
 Secondary school years Yes No Sometimes N/A *comeinsec x71*
- 56 Did you attend Sunday school or church while you were growing up? *Church x72*
 Never, or hardly ever Occasionally Regularly for at least a year
- 57 Generally, did your family have enough money to get by? *Money x73*
 more than enough enough not enough
- 58 What were your parents highest educational qualifications
- 59 At school were you Rarely or Never Occasionally Sometimes Regularly ie once a week

Punched, kicked or hit by other children?				
Left out, ganged up on, threatened or frightened?				

Physbull x74 Emotbull x75

60 At home were you Smacked?	Rarely or Never	Occasionally	Sometimes	Regularly
Hit with a strap, stick or something similar?				
Given a really severe thrashing?				

Smack x76 Hit x77 Thrash x78

61 At home did you ever watch adults fight?	Rarely or Never	Occasionally	Regularly
Physically?			
Verbally?			

Witphys x79 Witverb x80

- 62 Did you have much contact with the police?
 A lot Once or twice No *Police x81*

- 63 Was anyone else in your family involved in crime or have criminal convictions?
 Yes No Don't Know *Famcrim x82*

- 65 Was anyone in your family involved in heavy use of; *Famalc x83*
 Alcohol, Yes No If yes, relationship
 Drugs, Yes No If yes, relationship *Famdrg x84*
 Other substances, Yes No If yes, relationship *Famsub x85*

- 66 Apart from your parents were there other adults(family and friends) who you were close to while you were growing up?

- 67 Were there people you admired and wanted to be like?
 Yes No *Closeoth x86*
Admireoth x87

- 68 In general do you think that you were good at sports? *Goodsports x88*

- 69 In general did you do well at school? *Goodsch x89*

- 70 In general, did you have a happy childhood (scale as below) *Happych x90*

- 71 Do you think that your family was reasonably happy? *Happyfam x91*

- 1 2 3 4 5
 Very Good Very poor

71 What did you do in your spare time?	Most days	2-3 times a week	Less often	Never
<i>Tick the appropriate box</i>				
Doing things at home or with your family				<i>Spfam x92</i>
Having friends visit or visiting them				<i>Spfri x93</i>
Doing things in the neighbourhood/sports/clubs				<i>Spclub x94</i>
Hanging around town				<i>Sptown x95</i>
Did you get bored in your spare time?				<i>Spbord x96</i>

SCHOOL DAYS

Now we would like to ask about other aspects of your life ,we want to find out if there is a pattern to when you got into trouble. For example it could be times when things weren't good at home.

72 When did you finish school: Year & month: _____
 73 What year of school were you in when you left: _____ *Leavesch x97*
 74 What is your highest school qualification? *Schqual x98*
 Bursary University Sixth form School None
 Entrance Certificate Certificate

75 When you went out, did your parents or caregivers, usually know where you were and who you were with?

	Almost always	Usually	Sometimes	Usually not
High School				<i>Knosec x99</i>
Intermediate				<i>Knoint x100</i>
Primary up to S4				<i>Knosec x101</i>

76 Did you get into trouble at high school with the following things?

	At least once a week	Sometimes	Never
Truancing			<i>Htruant x102</i>
Ganging up on other children			<i>Hgangup x103</i>
Stealing from other children			<i>Hsteal x104</i>
Punching, kicking or hitting other children			<i>Hphysbull x105</i>
Fighting with other children			<i>Hfight x106</i>

77 Did you get into trouble at intermediate with the following things?

	At least once a week	Sometimes	Never
Truancing			<i>Itruant x107</i>
Ganging up on other children			<i>Igangup x108</i>
Stealing from other children			<i>Isteal x109</i>
Punching, kicking or hitting other children			<i>Iphysbull x110</i>
Fighting with other children			<i>Ifight x111</i>

78 Did you get into trouble at primary school (up to S4) with the following things?

	At least once a week	Sometimes	Never
Truancing			<i>Ptruant x112</i>
Ganging up on other children			<i>Pgangup x113</i>
Stealing from other children			<i>Psteal x114</i>
Punching, kicking or hitting other children			<i>Pphysbull x115</i>
Fighting with other children			<i>Pfight x116</i>

79 Were you ever suspended or expelled from school? Yes No Detail

High School			<i>Hexpel x117</i>
Intermediate			<i>Iexpel x118</i>
Primary up to S4			<i>Pexpel x119</i>

80 When you got home from school, was an adult or someone over 14 yrs usually there?

	Yes	No	Sometimes
Intermediate			<i>Afterint x120</i>
Primary up to S4			<i>Afterpri x121</i>

81 Name the high schools you went to and for how long: *Numsec x122*
 82 Name the intermediate schools you went to and for how long: *Numint x123*
 83 Name the primary schools you went to and for how long: *Numpri x124*

TOBACCO, ALCOHOL AND DRUG USE

Now:

84 Do you smoke? No Occasionally Regularly *Smoke x126*
 85 Do you drink alcohol? No In moderation Quite a lot *Alcho x127*
 86 Do you smoke marijuana (dope)? No Occasionally Regularly *Dope x128*
 87 Do you use any other illegal drugs? No Occasionally Regularly *Drug x129*

PARENT/CAREGIVERS QUESTIONNAIRE

In this interview we want to ask you about what happened for your son/daughter. The aim is to find out what helps people to stop offending and what things help people to keep offending. To start I would like to ask about when they got into trouble when they were young. [Prompt to remind about FGC]

CRIMINAL JUSTICE SYSTEM INVOLVEMENT AND OFFENDING HISTORY

1 How did you feel about your son/daughter getting into trouble with the police?

The first time: _____

The time of the FGC: _____

Options for Q2-7 are yes, no, partly, don't know.

- | | | |
|---|--|-------------|
| 2 | Did your son daughter complete the tasks set down at the FGC? | Tasks Y1 |
| 3 | Did you feel that you were involved in making the decisions at the FGC? | Involved Y2 |
| 4 | Did you really agree with the decisions? | Agreed Y3 |
| 5 | Did the way it was dealt with make you feel that you were a bad parent? | Bad Y4 |
| 6 | Do you think your son/daughter was really sorry about his/her offending? | Sorry Y5 |
| 7 | Do you think that the way the offence was dealt with was fair and that things were handled properly? | Fair Y6 |
| 8 | Would you have liked other family members to attend the FGC? | Family Y7 |

WHEN YOUR CHILD WAS BORN

Now we would like to ask you a few questions about the time when your son/daughter was born.

- | | | |
|----|---|-----------|
| 9 | How old were you and your partner when he/she was born?(If you are not the parent of the child but the child's primary caregiver go to question 11) | |
| 10 | When he/she was born, were you living together? Yes no | Living Y8 |
| 11 | Were you married? (Go to question 14) Yes no | Marrd Y9 |
| 12 | Briefly describe how you came to be the child's caregiver and the age of the child when you started taking care of him/her | |
| 13 | Who else was involved as a caregiver with you at that time? _____ | |
| 14 | How old were you? _____ Your partner/husband? _____ | |
| 15 | Was your son/daughter a wanted child? No Not then, but later Yes DK | |

WHILE YOUR CHILD WAS GROWING UP

- | | | |
|----|--|-----------------------|
| 16 | Were you working? What did you do? | Work Y10 |
| 17 | What have you done since? | |
| 18 | Please indicate when you have changed the places you have lived and the towns where you have lived since the birth of your son/daughter/dependent. | |
| 19 | Did you have a good relationship with your son/daughter | |
| | Very good Good OK Poor Very poor | |
| | At pre school | Relpre Y11 |
| | Primary school up to S4 | Relprim Y12 |
| | Intermediate | Relint Y13 |
| | High school | Relsec Y14 |
| | Since | Relaft Y15 |
| 20 | Were you and your partner together right through his/her childhood | Partog Y16 |
| 21 | Questions about other partners who lived with the child | |
| 22 | Did those partners have a good relationship with your son/daughter | Relpart Y17 |
| 23 | Who else did your son/daughter live with? | |
| 24 | How many brothers and sisters did he/she have? _____ | |
| 25 | Did your son/daughter attend a pre-school such as, Kindergarten or Kohanga Reo? | |
| | Yes No Don't Know | Presch Y18 |
| 26 | Generally, did your family have enough money to get by? | |
| | More than enough, enough, not enough | Money Y19 |
| 27 | Did your son/daughter ever run away from home and stay out overnight? | |
| | | Runaway Y20 |
| 28 | While growing up did your son/daughter spend much time with his/her father? | |
| | Quite a bit Sometimes Never | Fatime Y21 |
| 29 | Generally did he/she have a time to be in by? Int & sec | Yes no Aftschtme Y22 |
| 30 | Did he/she come in at that time? Int & sec Yes no | Intafts Y23 Safts Y24 |

31 At home was your son/daughter

	Rarely or Never	Occasionally	Sometimes	Regularly
Smacked?				<i>Smack Y25</i>
Hit with a strap, stick or something similar?				<i>Hit Y26</i>
Given a really severe thrashing?				<i>Thrash Y27</i>

32 At home did your son/daughter ever watch adults fight?

	Rarely or Never	Occasionally	Regularly
Physically?			<i>Watchphys Y28</i>
Verbally?			<i>Watchverb Y29</i>

33 Was anyone in your family involved in heavy use of;

	Yes	No	
Alcohol,			<i>Alcf Y30</i>
Drugs,			<i>Drgf Y31</i>
Other substances,			<i>Subsf Y32</i>

34 Was anyone else in your family involved in crime or have criminal convictions?

Yes No Don't Know *Crimef Y33*

35 Apart from yourself, were there other adults (family and friends) who your son/daughter was close to while growing up? Yes No *Otherclose Y34*

36 Did you have support from family and friends in raising your family?

Good support/ OK/ Not enough	Primary	
		<i>Supprim Y35</i>
	Int	<i>Supint Y36</i>
	Sec	<i>Supsec Y37</i>

37 Do you think that your family was reasonably happy?

1 2 3 4 5 *Happyf Y38*

Very happy

Very unhappy

38 When your son daughter went out, did you usually know where he/she was and who he/she was with?

Almost always Usually Sometimes Usually not

	High School	Intermediate	Primary
			<i>Knosec Y39</i>
			<i>Knoint Y40</i>
			<i>Knopri Y41</i>

39 When he/she got home from school, was an adult or someone over 14 yrs usually there?

	Yes	No	Sometimes
Intermediate			<i>Aftint Y42</i>
Primary			<i>Afpri Y43</i>

40

What did he/she do in his/her spare time?

	Most days	2-3 times a week	Less often	Never
<i>Tick the appropriate box</i>				
Doing things at home or with family				<i>Spfam Y44</i>
Having friends visit or visiting them				<i>Spfri Y45</i>
Doing things in the neighbourhood/sports/clubs				<i>Spclub Y46</i>
Hanging around town				<i>Sptown Y47</i>
Do he/she get bored in his/her spare time?				<i>Spbord Y46</i>

41 Were there periods in your life where the following were true about your son daughter:

	As a pre-schooler	In Primary School	At Intermediate	High School years
Restless/unable to concentrate				
Difficult to manage				<i>Diff Y49</i>
Getting into trouble at school or in community				<i>Troub Y50</i>
Not attending school when they should				<i>Truant Y51</i>
Being physically abused				<i>Physab Y52</i>
Being sexually abused				<i>Sexab Y53</i>
Being emotionally abused				<i>Emotab Y54</i>

42 Did he/she attend Sunday school or church while you were growing up?

Church Y55

Never, or hardly ever

Occasionally

Regularly for at least a year

A FEW QUESTIONS ABOUT YOURSELF

43 What is your highest educational qualification ?

Edqual Y56

44 What is your religion

45 How often do you attend church (or other place of worship)?

Chatt Y57

46 Do you smoke?

Parsmoke Y58

- 47 Do you drink alcohol? *Paral Y59*
 48 Do you smoke marijuana (dope)? *Pardope Y60*
 49 Do you use any other illegal drugs?
 50 Do you sniff glue or any other substance?
 51 Ethnicity
 52 Do you feel you know about your cultural background? *Cultkn Y61*
 53 If yes was there a time when this was not true?
 54 How do you feel about your culture and ethnic pbackground
 Very proud Proud OK Ashamed Very ashamed *Culpri Y62*
 55 How many generations are you able to trace your ancestry back? *Ancest Y63*

56 If Maori, as far as your involvement with Maori people and things Maori are concerned, do you normally:

- Feel uncomfortable and try to avoid those situations
- Feel quite comfortable
- Try to get involved if a little unsure
- Play an active role in what happens

1
2
3
4

57 If Maori, what is your iwi/hapu

FINALLY

- 58 Looking back on everything we have discussed, what do you think led your son/daughter to offend?
 59 Looking back on everything we have discussed, what could have helped your son/daughter to stop offending?
 60 If applicable, what has happened in the past 5 years to help your son/daughter to stop offending?

Thank you for your help. When the research is finished we will send you a brief account of the results if you would like.

訂正

38頁上から14行目

- ・問題の起訴→問題の基礎

訂正

藤本哲也

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法学新報103号（4・5号）